



State of Arizona  
Office  
of the  
Auditor General

**PERFORMANCE AUDIT**

**ARIZONA  
NATUROPATHIC  
PHYSICIANS BOARD  
OF  
MEDICAL EXAMINERS**

Report to the Arizona Legislature  
By Debra K. Davenport  
Auditor General

June 2000  
Report No. 00-9

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DEBRA K. DAVENPORT, CPA  
AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

June 21, 2000

Members of the Legislature

The Honorable Jane Dee Hull, Governor

Dr. John L. Brewer, Executive Director  
Naturopathic Physicians Board of Medical Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Naturopathic Physicians Board of Medical Examiners. This report is in response to a June 16, 1999, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §41-2951 et seq. I am also transmitting a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Naturopathic Physicians Board of Medical Examiners indicates that it will implement 15 of the 17 recommendations directed at the Board, implement one recommendation in a different manner, and will not implement one recommendation. The Board states that it does not find it necessary to implement the recommendation to require the executive director to submit a corrective action plan, including a timetable, for addressing records maintenance deficiencies.

My staff and I will be pleased to discuss or clarify items in the report.

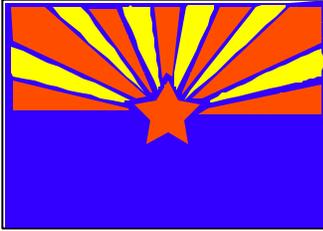
This report will be released to the public on June 22, 2000.

Sincerely,

A handwritten signature in black ink that reads "Debbie Davenport".

Debbie Davenport  
Auditor General

Enclosure

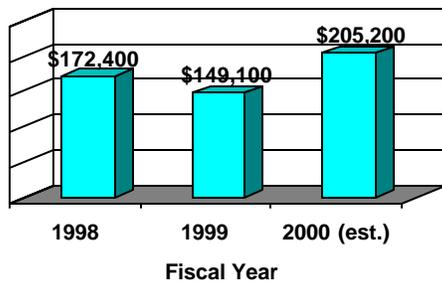


**Program Fact Sheet**

**Naturopathic Physicians Board of Medical Examiners**

**Services:** The Naturopathic Physicians Board of Medical Examiners is responsible for regulating naturopathic doctors through licensure. The Board performs the following services: 1) Conducts licensing examinations; 2) Audits doctors' compliance with annual continuing medical education requirements; 3) Issues and renews licenses and certificates; 4) Conducts investigations and hearings concerning unprofessional conduct or other statutory violations; 5) Disciplines violators; and 6) Provides consumer information to the public.

**Revenue:** \$205,200  
(Fiscal Year 2000 est.)



The Board receives no General Fund monies. Revenues are primarily derived from license, examination, and permit fees. Ten percent of Board revenues are remitted to the State General Fund.

**Facilities:** The Board owns no facilities. The Board's office is located at 1400 W. Washington in Phoenix. Board meetings are held in the same building.

**Equipment:** The Board owns only standard office equipment.

**Personnel:** 3 full-time positions, one of which has never been filled.

The Board consists of five members who serve five-year terms:

- Three naturopathic doctors who have resided in the State and practiced naturopathic medicine full-time for at least five years preceding appointment; and
- Two public members.

**Agency Mission:**

*"The primary duty of the Board is to protect the public from unprofessional and incompetent physicians who practice naturopathic medicine."*

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**Program Goals (Fiscal Year 2000-2001)**

1. To efficiently process license and certificate applications and administer examinations.
2. To investigate in a timely manner and adjudicate complaints to protect the public from incompetent and unprofessional practitioners and report the unlawful practice of naturopathic medicine to the county attorneys and the Office of the Attorney General.
3. To implement a program that would audit naturopathic physicians' prescribing and dispensing practices and also their compliance with annual continuing medical education (CME) requirements.

**Adequacy of Performance Measures:**

Although the Board's three goals appear to be reasonably aligned with its mission, auditors identified some problems with the Board's performance measures:

- The Board does not have 4 of the 15 performance measures required by the Governor's Office of Strategic Planning and Budgeting. For example, the Board does not have a performance measure to report the percentage of applicants or license holders reporting very good or excellent customer service. However, the Board has recently developed a survey to obtain such feedback.
- Some of the Board's reported information appears to be inaccurate or incorrect. This includes the information reported for timely investigation and adjudication of complaints, percentage of license applicants passing the examination, and percentage of physicians in compliance with the dispensing statute.

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## SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Arizona Naturopathic Physicians Board of Medical Examiners pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

The Naturopathic Physicians Board of Medical Examiners was established in 1935 to regulate naturopathic physicians through licensure. The 5-member Board is funded primarily through licensing fees and regulates approximately 195 active naturopathic physicians. These naturopaths were once restricted to using natural, drugless, and nonsurgical methods; however, in 1992 the law was changed to allow these physicians to perform many of the same activities performed by allopathic (M.D.) and osteopathic (D.O.) physicians.

### **Legislative Clarification of Naturopaths' Scope of Practice May Be Needed (See pages 9 through 15)**

The Legislature may wish to consider reviewing the Board's statutes to more clearly define what services naturopaths can perform. Seemingly minor statutory changes have broadened the naturopathic scope of practice to include practices once limited to allopathic (M.D.) and osteopathic (D.O.) physicians. Arizona's board, which has statutory authority to adopt rules for recognizing naturopathic specialties, now proposes recognizing 16 specialties including family medicine and minor surgery, internal medicine, neurology and psychiatry, and ophthalmology. It is not clear if the Legislature intended such an extension of naturopaths' activities. No other state that regulates naturopaths recognizes such a broad range of specialties.

The Legislature may also wish to consider reviewing the Board's statutes to determine if increased review should be

provided over what prescriptions naturopaths can write. The Board's statutes require it to develop a list of "natural substances" that naturopaths can prescribe, but the statutes do not define what "natural substances" are. The Board has developed an extensive list, or formulary, that includes not only vitamins and minerals, but also vaccines, antibiotics, oral contraceptives, anabolic steroids, and controlled substances such as morphine and cocaine. The federal Drug Enforcement Administration has recently approved Arizona naturopaths to prescribe controlled substances from the formulary because this appears to be in accordance with state law. Although some other states allow naturopaths to prescribe and dispense drugs, none has a list as extensive as what the Board has developed. Most of these states also have separate oversight bodies to develop or review the list, while Arizona does not. These other states have also established their formularies in rule before allowing naturopaths to begin prescribing drugs; Arizona has not.

**Numerous Problems  
Exist with Licensing Exam  
(See pages 17 through 24)**

The Board needs to correct numerous problems with its three-part licensing examination, or adopt a national examination, to ensure that the naturopaths it licenses are competent. Since 1997, the Board has been administering a licensing examination it developed specifically for Arizona. Problems with this examination call into question its validity as a tool for measuring an applicant's competence to practice naturopathy. For example, the Board has not ensured that the examination tests what a naturopath would need to know to practice safely and has not shown that examination writers possess the necessary expertise and training to develop test questions. Further, the Board has made extensive adjustments to examination scores. For example, one licensure applicant received credit for 90 questions that she had answered incorrectly on one part of the February 1999 exam. As a result of such scoring adjustments, no one has failed the Board's exam since September 1998.

The Board also has not maintained adequate examination records to show that all licensed naturopaths have taken all required parts of the examination. For 19 of the 32 naturopaths

licensed between November 1998 and October 1999, the Official Examination Record did not show that they had taken all examinations required for licensure. If the Board continues to develop and administer its own examination, it needs to take steps to address all of these deficiencies.

### **The Board Needs to Improve Complaint Processing (See pages 25 through 30)**

The Board needs to improve complaint processing to ensure that complaints are resolved in a timely and appropriate manner. Although the Board receives only 6 to 13 complaints each year, at the time of this review, it had developed a backlog of cases. Of 13 unresolved complaints, 5 had been open for more than 1,000 days.

After these backlogged cases were brought to the Board's attention, the Board made an effort to resolve them by placing them on meeting agendas for discussion and by working to hire a complaint investigator. While this is a step in the right direction, some additional improvements are needed. The Board's complaint records are so limited that the Board probably cannot provide consumers with a complete, or even a recent, history of complaints and disciplinary actions against practitioners. Poor recordkeeping has also resulted in some confusion about which complaints have been resolved.

The Board also needs to separate its complaint investigation and adjudication functions. Currently, the full board participates in investigative interviews with licensees, and then adjudicates the case. Although not illegal, this practice can give the appearance of bias and is inconsistent with the Attorney General's advice contained in the *Arizona Agency Handbook*. The process should be changed so that Board members either do not participate in investigations, or, if they do participate, are recused from resolving the case.

**Board Needs to Strengthen  
Operations and Improve  
Oversight of Executive Director  
(See pages 31 through 37)**

Board operations suffer from numerous problems that either have not been recognized or adequately addressed. In addition to those problems already discussed above, recordkeeping deficiencies exist in a number of other areas, and the Board has had difficulty staying within its personal services budget. In addition, the Board has not responded to a 1992 legislative directive to develop rules for approving naturopathic medical schools and training programs. It has not responded to legislative directive to establish time frames for issuing licenses as required by A.R.S. §41-1073(A), to be in place by December 31, 1998. Many of these problems are compounded by the Board's failure to adequately oversee its executive director. In addition, the Board has allowed open meeting law violations to occur, and its members have sometimes voted on issues that could carry the appearance of a conflict of interest. For example, a former member voted to approve a training program at an institution where the member was on the faculty. Further, until August 1999, the Board allowed its executive director to also act as a Board member even though this was statutorily prohibited in August 1998.

**Sunset Factors  
(See pages 39 through 47)**

As part of the Sunset review process, this audit also recommends some additional changes to the Board's practices, rules, and statutes. For example, the Board should take disciplinary actions against naturopaths who do not comply with the requirement to attend continuing education courses. The Board also needs to adopt numerous rules relating to issues such as licensing time frames, as well as the criteria it will use for approving schools, training programs, and specialty designations. Finally, the Legislature should consider amending the Board's statutes to allow the Board to subpoena medical records as part of complaint investigations, and to allow the Board to keep its examination and examinees' scores confidential. Currently, at

## ***Summary***

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least five other regulatory boards, including those that regulate podiatrists and optometrists, have statutory provisions to keep examinations and scores confidential.

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# INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and Sunset review of the Naturopathic Physicians Board of Medical Examiners (Board) pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes §§41-2951 through 41-2957.

## Board Responsibilities

Laws 1935, Chapter 105 established what is now called the Arizona Naturopathic Physicians Board of Medical Examiners, which is responsible for regulating naturopathic doctors through licensure. A.R.S. §32-1501(20) defines the practice of naturopathic medicine as “a medical system of diagnosing and treating diseases, injuries, ailments, infirmities and other conditions of the human mind and body including by natural means, drugless methods, nonsurgical methods, devices, physical, electrical, hygienic and sanitary measures and all forms of physical agents and modalities.” As part of its duties, the Board:

- ✓ Certifies doctors who dispense natural substances to patients,
- ✓ Certifies doctors who practice as specialists,
- ✓ Certifies medical assistants who assist naturopathic doctors, and
- ✓ Approves students’ and graduate doctors’ training programs.

The Board’s mission states:

*The primary duty of the Board is to protect the public from unprofessional and incompetent physicians who practice naturopathic medicine.*

The Board accomplishes this mission by performing a variety of functions including:

- ✓ Ensuring that persons practicing naturopathic medicine possess required qualifications by issuing and renewing licenses;
- ✓ Conducting investigations and hearings concerning unprofessional conduct or other statutory violations;
- ✓ Disciplining violators; and
- ✓ Providing consumer information to the public.

Currently, the Board licenses approximately 195 active naturopathic doctors and receives approximately 6 to 13 complaints each year.

### **Statutory Licensure Requirements**

The Board's statutes and rules contain the following general education, experience, and examination requirements for licensure as a naturopathic doctor:

- ✓ Graduation from an approved school of naturopathic medicine. There are currently four schools of naturopathic medicine in North America that are accredited or are candidates for accreditation by the Council on Naturopathic Medical Education. One of these schools is located in Arizona.
- ✓ Completion of an approved internship, preceptorship, or clinical training program in naturopathic medicine<sup>1</sup>; and

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<sup>1</sup> Internship and preceptorship training are completed after graduation from a naturopathic medical school. Internship training consists of rotations through various areas of medical practice and lasts 12 months or more. Preceptorship training is focused on an area of medical practice and lasts less than 12 months. Clinical training is completed during the last 2 years of medical school.

- ✓ Passage of the three parts of the written licensure examination with a grade of 75 percent or more on each part of the exam.

## **Organization and Staffing**

The Board consists of five governor-appointed board members, who serve five-year terms. Three of the members must be naturopathic doctors who have resided in the State and practiced naturopathic medicine full-time for at least five years preceding appointment. The remaining two board members are public members who do not have any connection to medical schools, institutions, or practitioners.

Currently, the Board's staff includes an executive director and one secretary who are responsible for:

- ✓ Collecting application, renewal, and other fees;
- ✓ Accepting and preparing application files for Board review;
- ✓ Initiating investigations of unprofessional conduct and medical incompetence; and
- ✓ Providing information to the public.

The Board is also authorized a third full-time position for inspecting schools and training programs, and evaluating continuing medical education programs. However, this position is not currently filled.

## **Budget**

The Legislature appropriates monies to the Board from the Naturopathic Physicians Board of Medical Examiners Fund. This fund contains revenues derived principally from the collection of licensure application and renewal fees. The Board deposits 90 percent of its revenues into the Naturopathic Physicians Board of Medical Examiners Fund and the remaining 10 percent of revenues into the General Fund. Table 1 (see page 4)

**Table 1****Naturopathic Physicians Board of Medical Examiners  
Statement of Revenues, Expenditures, and Changes in Fund Balance  
Years Ended or Ending June 30, 1998, 1999, and 2000  
(Unaudited)**

	<b>1998 (Actual)</b>	<b>1999 (Actual)</b>	<b>2000 (Estimated)</b>
Revenues:			
Licenses, fees, and permits	\$142,342	\$128,925	173,400
Sales and charges for goods and services <sup>1</sup>	25,955	16,463	30,800
Fines and forfeits	1,675	250	800
Other	<u>2,384</u>	<u>3,472</u>	<u>200</u>
Total revenues	<u>172,356</u>	<u>149,110</u>	<u>205,200</u>
Expenditures: <sup>2</sup>			
Personal services	54,744	66,716	105,900 <sup>3</sup>
Employee related	11,610	13,118	15,000
Professional and outside services	25,049	22,404	43,700 <sup>4</sup>
Travel, in-state		1,583	2,000
Other operating	5,749	10,314	15,800
Equipment	<u>3,509</u>	<u>5,839</u>	<u>          </u>
Total expenditures	<u>100,661</u>	<u>119,974</u>	<u>182,400</u>
Excess of revenues over expenditures	71,695	29,136	22,800
Remittances to the State General Fund <sup>5</sup>	<u>17,228</u>	<u>15,015</u>	<u>20,500</u>
Excess of revenues over expenditures and remittances to the State General Fund	54,467	14,121	2,300
Fund balance, beginning of year	<u>108,467</u>	<u>162,934</u>	<u>177,055</u>
Fund balance, end of year	<u>\$162,934</u>	<u>\$177,055</u>	<u>\$179,355</u>

<sup>1</sup> Over 96 percent of the amount is derived from examination fees, and less than 4 percent from sales of physician directories.

<sup>2</sup> Includes administrative adjustments from the prior year.

<sup>3</sup> Includes an estimated \$25,000 to fund a newly authorized position for inspecting schools of naturopathic medicine.

<sup>4</sup> Includes estimated additional costs for acquiring investigative services, medical consultants, and court reporting services necessary for handling an increased level of licensee complaints. In addition, includes an estimated one-time cost for procuring additional exam questions.

<sup>5</sup> As a 90/10 agency, the Board remits all of its administrative penalties and 10 percent of all other revenues to the State General Fund.

Source: The Arizona Financial Information System *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for the years ended June 30, 1998 and 1999; and the Department's Revenue and Expenditure Statement as of December 30, 1999, for the 2000 estimates.

illustrates the Board's actual and estimated revenues and expenditures for fiscal years 1998 through 2000.

### **Audit Scope, Methodology, and Limitations**

Audit work focused on the Board's licensure examination, complaint investigation, and adjudication processes, Board management, and naturopathic doctors' scope of practice. This performance audit and Sunset review includes findings and recommendations as follows:

- ✓ The need for legislative review of the Board's scope of practice and changes to the Board's process for developing a formulary, which is a list of natural substances that naturopaths can prescribe (see Finding I, pages 9 through 15);
- ✓ The need for the Board to improve its written licensure examination or use the national examination (see Finding II, pages 17 through 24);
- ✓ The need for the Board to resolve complaints in a timely manner, improve recordkeeping, and change its investigation and adjudication processes (see Finding III, pages 25 through 30);
- ✓ The need for increased Board oversight of Board staff (see Finding IV, pages 31 through 37); and
- ✓ The need for the Board to adopt rules; to take action against naturopaths who do not comply with continuing education requirements; and to ensure compliance with state procurement regulations (see Sunset Factors, pages 39 through 47).

Throughout the audit, Auditor General staff encountered a number of limitations in obtaining information about the Board's performance. Specifically, the Board's staff was not readily able to provide complete complaint logs or any other assurance that the auditors were provided all complaint files. In addition, complaint files were missing needed documentation,

including Board resolutions. Other information that was not readily available, and in some cases could not be provided, included Board meeting minutes for some meetings since 1996, and exam results and supporting documentation for some exams administered since September 1998.

This audit used a variety of methods to study the issues addressed in this report. These methods included interviewing Board members, the Board's executive director, and the Board's current and former Attorney General representatives; attending Board meetings; and reviewing statutes, rules, and Board meeting minutes. In addition, the following specific methods were used:

- ✓ To compare the scope of practice of naturopathic doctors in Arizona to other states, as well as the formulary development process, auditors reviewed statutes and other documents from 10 of the 11 states that license naturopaths.<sup>1</sup> Auditors also interviewed representatives from 6 of these states.
- ✓ To evaluate the Board's licensure examination, auditors identified nationally accepted standards for licensure exams and compared these with the Board's exam, policies, and procedures. Further, auditors reviewed the scoring of 18 written examinations administered in February 1999. Finally, one auditor took part 2 of the Board's examination that was administered in February 1999 and applied the Board's scoring practices to determine if this auditor would pass or fail the examination.
- ✓ To assess the timeliness of the Board's complaint investigation and adjudication processes, auditors reviewed 42 complaints that appeared to be within the Board's jurisdiction and were received between January 1996 and October 1999.

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<sup>1</sup> The states that license naturopathic doctors are Alaska, Arizona, Connecticut, Hawaii, Maine, Montana, New Hampshire, Oregon, Utah, Vermont, and Washington. Hawaii's statutes and other documentation were not readily available and were not included in this review.

## ***Introduction and Background***

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- ✓ To assess the timeliness of issuing licenses, auditors reviewed a random sample of the licensing files of 33 naturopaths who renewed their licenses for 1999. Auditors also reviewed the licensing files of 15 naturopaths who received initial licenses in 1998 and 1999. These 10 files included a random sample of 10 initial 1998 licenses, and all 5 initial 1999 licenses issued as of October 1999.
- ✓ To determine whether the Board provides consumers with accurate and complete information, including complaint histories, about licensed naturopaths, auditors posing as members of the public made four calls to the Board requesting information. In addition, one auditor visited the Board's office to review a file in person.
- ✓ To determine whether the Board complies with state procurement regulations, auditors reviewed documentation for 12 service contracts.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the members of the Naturopathic Physicians Board of Medical Examiners and staff for their assistance throughout the audit.

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## FINDING I

# LEGISLATIVE CLARIFICATION OF NATUROPATHS' SCOPE OF PRACTICE MAY BE NEEDED

Recent statutory changes have broadened the scope of naturopathic medicine in Arizona beyond its traditional boundaries. Only a few states regulate naturopathy, and with the exception of Arizona, most of these place numerous restrictions on the practice. In contrast, the scope of practice in Arizona is broad enough to allow naturopaths to perform many activities once limited to allopathic (M.D.) and osteopathic (D.O.) physicians. In addition, the Board has also interpreted the statute allowing naturopaths to prescribe “natural substances” to include many legend, or prescription, drugs and controlled substances.

### Naturopathic Laws Vary Among States

There appears to be little agreement among states and professional organizations about the appropriate level of regulation and scope of practice for naturopathic physicians. Currently, only 11 states regulate naturopathy. A 12th state, Florida, has naturopathic statutes on the books, but the law applies only to naturopaths who became licensed before July 1, 1959. Further, it has been reported that several other states, like Florida, once had naturopathic licensing laws, but have abolished them.<sup>1</sup> At least two of these states, Tennessee and South Carolina, have gone so far as to make naturopathy illegal.<sup>2</sup> Among the states

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*Few states regulate naturopathy.*

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<sup>1</sup> These states include California, Georgia, Pennsylvania, South Carolina, Tennessee, and Texas.

<sup>2</sup> South Carolina’s law states that it is illegal for anyone to practice naturopathy. Naturopathy is also illegal in Tennessee except when practiced by individuals who are licensed in the various healing arts, such as M.D.s, D.O.s, chiropractors, and dentists.

that do regulate naturopathy, laws vary from prohibiting naturopathic doctors from claiming to practice medicine to allowing them to act as primary care physicians. Despite the variation in the practices allowed, most states that regulate naturopathy require similar levels of education and training for licensure.

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*Professional groups disagree about the appropriate scope of practice.*

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There is also dissension among professional naturopathic groups about the necessity of licensure and the appropriate scope of practice. Two groups, the Coalition for Natural Health and the American Naturopathic Medical Association, actively oppose licensure. These organizations maintain that no true naturopath would desire to prescribe drugs, perform surgery, or undertake other activities that have traditionally been within the realm of allopathic physicians, or M.D.s. On the other hand, the American Association of Naturopathic Physicians (AANP) actively supports licensure and views prescribing drugs and performing minor surgery as being within the appropriate scope of practice.

### **Arizona Appears to Allow Broadest Scope of Practice**

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*Arizona's laws place few restrictions on naturopathic practice.*

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Recent statutory changes appear to have made Arizona's naturopathic laws the most permissive in the nation. In 1992, minor statutory wording changes expanded the scope of naturopathic medicine's practice beyond its traditional boundaries. The legislative intent behind these changes is unclear. However, Arizona's Board, which has statutory authority to adopt rules for recognizing naturopathic specialties, now proposes recognizing 16 specialties, many of which were once limited to M.D.s and D.O.s. Other states do not permit such a broad scope of practice, and those that recognize specialties limit them to naturopathic childbirth and acupuncture.

***Statutory change impacts scope of practice***—Prior to 1992, Arizona statutes limited naturopathic physicians to treating patients through drugless and non-surgical means. Two court cases and a 1990 Attorney General opinion affirmed that naturopaths could not prescribe drugs or perform surgery based on the statutory definition of naturopathy at the time:

“Naturopathy” means a system of treating the abnormalities of the human mind and body by the use of natural, drugless or non-surgical methods, including the use of physical, electrical, hygienic and sanitary measures and all forms of physiotherapy.

However, in 1992, the word “including” was inserted in the definition, and together with subsequent changes, A.R.S. §32-1501(20) now provides:

“Practice of naturopathic medicine” means a medical system of diagnosing and treating diseases, injuries, ailments, infirmities and other conditions of the human mind and body ***including*** by natural means, drugless methods, nonsurgical methods, devices, physical, electrical, hygienic and sanitary measures and all forms of physical agents and modalities. (emphasis added.)

With the addition of “including,” the statute no longer limits naturopaths to natural, drugless, or non-surgical methods. Instead, the only limitation on the procedures Arizona naturopathic physicians may perform is whether the practice is taught in naturopathic medical schools or training programs.

***Legislative intent is unclear***—It is unclear whether the Legislature intended for these changes to significantly expand naturopathic physicians’ scope of practice. Auditors were unable to locate minutes for committee hearings in which the change would have been discussed. In addition, the changes did not go through the formal sunrise process, where any increase in the scope of practice would have been legislatively reviewed. As part of the sunrise review, the Board would have had to explain why a change was needed, and provide evidence that it had previously functioned adequately in protecting the public. Other areas that the Legislature would have reviewed include whether effective quality assurance standards exist, such as a code of ethics, and whether training is available to prepare practitioners to function at the proposed level.

**Board proposes numerous specialties**—The Board now plans to allow naturopaths to advertise expertise in 16 specialty practice

<b>Proposed specialties:</b>	
Acupuncture	Dermatology
Emergency Medicine	Family Medicine and
Geriatrics	Minor Surgery
Internal Medicine	Medical Imaging and
Medical Pharmacology	Radiology
and Toxicology	Neurology
Obstetrics and Gynecology	and Psychiatry
Ophthalmology	Orthopedics, Physical
Pathology and	Medicine, and
Laboratory Medicine	Rehabilitation
Pediatrics	Preventive and
Proctology	Environmental
	Medicine

areas, many of which were once limited to M.D.s and D.O.s. The Board has the statutory authority to adopt rules for approving naturopathic specialties. Although it has not yet adopted any such rules, the Board has already approved training programs in at least 4 specialty areas, and has issued certificates to at least 16 naturopaths in the specialty of family medicine. Cur-

rently, there are no statutory restrictions on the type of specialties that the Board can recognize, nor are there specific statutory education or examination requirements for doctors seeking specialty certification.

**Other states restrict practices**—In contrast, other states that regulate naturopaths continue to impose numerous restrictions on naturopathic practices and specialties. Most of these states' statutes specifically limit naturopathic practices to such things as hydrotherapy, dietetics, electrotherapy, sanitation, manipulation, counseling, prescribing diagnostic tests, and performing physical exams. Further, although there are four states other than Arizona that recognize specialties, these are limited to natural childbirth and/or acupuncture.<sup>1</sup> The other states that recognize specialties also generally have statutes that specify education and/or training requirements and limit the procedures that a naturopath can perform. For example, these states' statutory requirements for becoming a specialist in naturopathic childbirth include such things as completing an internship with an M.D., passing examinations, and participating in a minimum number of live births.

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*Other states limit specialties to naturopathic childbirth and acupuncture.*

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<sup>1</sup> These states are Maine, Montana, New Hampshire, and Oregon.

Because the scope of practice in Arizona appears to be much broader than in these other states, and it is not clear whether this is what the Legislature intended, the Legislature should consider reviewing A.R.S. §§32-1501(17) and (20), and if necessary, modify the statutes to more clearly outline acceptable practices.

### **Extensive Formulary Includes Prescription Drugs and Controlled Substances**

The Board has assembled a list (called a formulary) of more than 460 items that it believes naturopaths should be able to dispense under current statutory authority of “natural substances”—a term the statutes do not define. The Board’s list includes both prescription drugs and some controlled substances. The list has not been established by administrative rule, which would allow for public input. Other states with such lists have established them by administrative rule and also have oversight bodies to review the items included.

***Arizona’s formulary includes a broad range of drugs***—In establishing its extensive formulary, the Board relies on a 1995 Attorney General intraoffice memo indicating that statutes allow naturopaths to dispense and administer natural substances, including drugs. The Board defines “natural substances” to mean drugs derived from animals, minerals, or vegetables. The resulting formulary lists more than 460 items that include not only vitamins and minerals, but also vaccines, antibiotics, oral contraceptives, anabolic steroids, and narcotics. For example, according to the Board’s formulary, naturopaths can prescribe and dispense oxytocin, which stimulates uterine contractions; Lovastatin, which is used to control cholesterol levels; and controlled substances, such as morphine and cocaine, that are used as pain medications.

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*The DEA will now allow Arizona naturopaths to prescribe controlled substances.*

***Efforts have been made to gain wider recognition for Arizona’s formulary***—The Board’s formulary has recently been recognized by the DEA, and efforts have been made to gain it wider acceptance by drug suppliers and pharmacists. The DEA has recently approved Arizona naturopaths to prescribe controlled

substances since this authority appears consistent with current state law. In addition, the Board acted in at least one case to inform a drug supplier that Arizona naturopaths are allowed to prescribe and dispense substances on the formulary. However, Arizona pharmacists may still be hesitant to fill prescriptions by naturopaths. One concern is that the formulary is not established in rule, which would have afforded pharmacists and other outside parties an opportunity to provide input. Because the formulary is not in rule, pharmacists must determine whether a prescribed substance is “natural.” For example, a pharmacist may decide to fill a prescription for the antibiotic penicillin, but may not fill one for amoxicillin because it is a semisynthetic penicillin.

***Other states impose greater limits on prescribing authority—***

Some other states do allow naturopaths to prescribe drugs; however none has as extensive a formulary as Arizona, and most require a separate body to oversee formulary development. Currently, laws in 7 other states give naturopaths prescription authority; however, only 5 of these states have established the formularies necessary to allow naturopaths to begin prescribing drugs.<sup>1</sup> The largest of these formularies is in Oregon and lists approximately 270 different substances, or about 200 fewer than Arizona’s.

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*In other states, M.D.s and pharmacists help oversee naturopathic formularies.*

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Most of the other states with statutory prescribing authority also have an oversight body designated to develop or review the formulary. These formulary committees typically consist of naturopaths, pharmacists, and M.D.s. These other states have also adopted their formularies in rule before allowing naturopaths to begin prescribing substances from their lists.

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<sup>1</sup> New Hampshire and Utah have not yet established formularies. States with formularies include Maine, Montana, Oregon, Vermont, and Washington. Formularies in Montana, Oregon, and Vermont include some controlled substances, but only naturopaths in Montana and Oregon currently have DEA authority to prescribe these drugs.

## **Recommendations**

1. The Legislature should consider reviewing A.R.S. §§32-1501(17) and (20) to determine whether the current scope of practice is appropriate and clarify the statutes as needed to more clearly outline acceptable practices.
2. The Legislature should consider amending A.R.S. §32-1501 to define “natural substances” and thereby clarify what naturopaths may prescribe.
3. The Legislature should consider establishing an oversight committee consisting of naturopaths, pharmacists, medical doctors, and others as the Legislature determines necessary, to develop and/or review any formulary considered for use by Arizona naturopaths.
4. The Board should adopt its formulary in rule to allow for public comment and input.
5. The Board should adopt rules outlining the standards for approving specialty training programs and certification before accepting and approving applications for specialty schools, training programs, and certification.

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## FINDING II

## NUMEROUS PROBLEMS EXIST WITH LICENSING EXAM

Problems with the Board's three-part licensing examination indicate that the Board has either allowed incompetent naturopaths to practice, or that the exam itself is not a valid tool for measuring competence. Although all applicants taking the examination since September 1998 have passed, it appears that they did so because the Board adjusted their scores. The Board has not ensured that the examination, which it developed specifically for use in this state, meets recognized standards. The Board also has not maintained adequate examination records to

**A.R.S. §32-1525** requires licensure applicants to take a three-part licensure examination. Applicants pass the exam if they achieve 75 percent on each part of the exam.

- ✓ **Part 1 Exam Subjects:** anatomy, basic pharmacology and toxicology, biochemistry, microbiology and immunology, physiology, pathology, and naturopathic jurisprudence.
- ✓ **Part 2 Exam Subjects:** dermatology, ophthalmology and otolaryngology, geriatrics, infectious diseases, neurology and psychiatry, pediatrics, obstetrics and gynecology, orthopedics, physical medicine, and rehabilitation.
- ✓ **Part 3 Exam Subjects:** emergency medicine and minor surgery, clinical pharmacology, internal medicine, laboratory diagnosis and diagnostic imaging, clinical nutrition, botanicals, and diet therapy.

show that all licensed naturopaths have taken all required parts of the examination. If the Board continues to develop and administer its own examination, it needs to take steps to address these deficiencies.

The Board has been administering its own licensing examination since 1997. Prior to that time, the Board contracted with a company that had developed a naturopathic licensing examination used by several other states. However, conflicts with the vendor, and statutory changes requiring Arizona to test many more subjects than were included on the vendor-supplied test, led the Board to develop its own

test. The Board administers its examination twice each year, typically in February and September.

## **Scoring Methods Are Questionable**

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*Everyone passed the February 1999 exam, but without scoring adjustments, no one would have passed.*

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Since September 1998, each part of the Board's three-part examination has had a 100 percent pass rate; however, it appears that the Board achieves this rate only by making substantial adjustments to licensure applicants' test scores. Through scoring adjustments, the Board determined that all individuals who took the February 1999 examination were competent in all areas tested, even though none actually achieved the necessary 75 percent score on any part of the exam on their own.<sup>1</sup> Scores these applicants attained prior to scoring adjustments ranged from 51 percent to 72 percent. In rescoring the examination, the Board:

- ✓ **Allowed credit for "difficult" questions**—The Board determined that approximately one-sixth of all February 1999 examination questions were too difficult and gave applicants full credit for each of these questions. These adjustments added between 15 and 18 percent to all examination scores. The Board identified the "difficult" questions by looking at the number of applicants who answered the questions correctly, without further analysis of whether the question was valid and appropriate. Furthermore, the Board did not modify or remove these questions from the September 1999 administration of the examination.
- ✓ **Made additional adjustments**—Even after adjusting for the "difficult" questions, only 9 of the 18 examinations had passing scores. Additional adjustments, for which there was no apparent justification, were made to these 9 examinations, which enabled the applicants to pass. For example, on the

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*One person received credit for 90 incorrect responses on the 380 question part 2 exam.*

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<sup>1</sup> The Board provided testing information and statistics for only the February 1999 examination administration. Testing statistics and other requested information for the September 1998 and September 1999 test administrations was not available for analysis.

part 2 examination, one individual received credit for a total of 90 questions that she answered incorrectly.<sup>1</sup>

The Board's decision to substantially adjust scores could have enabled incompetent naturopaths to pass each part of the examination and to become licensed. This appears possible since an auditor with no medical background or training took part 2 of that examination under simulated testing conditions and, if given the same scoring adjustments, would have passed.

### **Test Development Does Not Meet Recognized Standards**

In developing its examination, the Board has not ensured that the examination tests what a naturopath would need to know to practice safely. The Board has also not shown that examination writers possess the necessary expertise and training to develop test questions. In addition, the examination itself is poorly constructed. Finally, the Board has not demonstrated that the 75 percent "pass point" for these exams differentiates between qualified and unqualified individuals.

***No evidence that the examination's content is valid***—Although specific examination subject areas are required by statute, the Board has not shown that its three-part examination measures critical naturopathic skills in these areas. Whether the examination actually measures competence in naturopathic medicine is questionable since the auditor who took part 2 of the examination scored as well as or better than trained naturopathic students on four of the six examination sections. Moreover, the Board's examination includes questions that do not appear valid for measuring naturopathic competence since they relate to activities outside the scope of naturopathic medicine. For example, one ophthalmology question is related to fit and wearability of soft contact lenses, which are not among the natural substances that a naturo-

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*Some questions appear unrelated to naturopathic practice.*

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<sup>1</sup> The 90-point adjustment was the largest adjustment made and includes credit for 69 "difficult" questions for which all applicants received credit, and 21 questions for which there is no explanation. In addition, this applicant and at least 5 others received double credit for those "difficult" questions that they initially answered correctly.

path could prescribe or dispense. Another question relates to preparing a patient for major surgery, which is outside naturopaths' training.

Test development literature recommends that licensing boards base their examinations on a job analysis of the profession. Such an analysis would enable the Board to determine which abilities are critical for safe practice, and then ensure that its examination requires applicants to demonstrate mastery of these abilities before becoming licensed.

***No evidence test writers are qualified***—The Board has not shown that it set specific experience criteria or required test writers to demonstrate test writing and subject matter expertise through an application or bidding process. The Board indicates it determined that it would pay \$6 per examination question, then sought to obtain a mix of recent graduates and long-term practitioners to write questions. It also indicated that it sought individuals who were faculty members or otherwise had experience in particular subjects. However, the Board did not work with the State Procurement Office to contract with test writers and was unable to provide any evidence that the test writers selected met minimum qualifications to develop questions.

In contrast, testing literature suggests that examination writers be members of the profession who are viewed as “masters” by their peers. In addition, test writers should be trained to ensure that they understand the required content of the test and that they are familiar with the characteristics of good test questions.

Further, the competency of at least two individuals involved in test development is questionable. Specifically:

- ✓ One individual with whom the Board contracted to write 400 basic science (for example, anatomy, physiology, biochemistry) questions had previously failed two administrations of the vendor-supplied basic sciences licensing examination in all but one of these same subjects. She challenged the results of the second examination administration and the Board changed her scores to passing. She did not retake the basic science examination, nor is there any evidence that she took a clinical

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*Some persons who have had difficulty passing examinations are now writing them.*

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sciences examination that was required at the time she was licensed.

- ✓ The Board has designated another individual to review examination questions and rewrite those considered to be highly difficult. In February 1997, this individual failed all but two basic science subjects on part 1 of the Board's examination. The failed subjects were retaken and passed in September 1997; however, a review of the Board's Official Examination Record and other examination information provided by the Board shows no evidence that this individual took the remaining part 2 and part 3 portions of the examination required for licensure.

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*Errors in questions not corrected.*

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***Test is poorly constructed***—A number of examination questions are problematic and could confuse licensure applicants who take the tests. For example, the Board has not ensured that examination questions are not repeated or that they do not have more than one correct answer. In addition, the examination contains several questions with typographical errors, including some that affect correct answers and could confuse applicants. Test takers informed the Board of errors in February 1999, but the Board did not modify its examination prior to administering it again in September 1999. Examination literature indicates that before an examination is administered, questions should be reviewed to ensure accuracy, appropriate grammar, adherence to sound question-writing practices, and technical accuracy.

***No evidence that 75 percent "pass point" is appropriate***—The Board also has not shown that the 75 percent pass point is the appropriate dividing line between competent and incompetent practice. According to national testing standards, it is essential that the Board demonstrate how candidates scoring below the pass point are not competent and candidates scoring at or above the pass point are competent.

### **Examination Records Not Adequately Maintained**

In addition to the problems noted above, the Board does not maintain sufficient examination records to support that appli-

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*Official Exam Record does not show that 19 of 32 recent licensees took all parts of the exam.*

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cants have taken and successfully passed the required examinations. Auditors compared the list of naturopaths licensed between November 1998 and October 1999 to the Official Examination Record—the Board’s list of applicants and their adjusted test scores—to determine whether applicants had taken all required examinations. For 19 of the 32 licensees, the Official Examination Record did not show that they had taken all examinations required for licensure.

There is also evidence that even for those applicants included in the Official Examination Record, the results may be inaccurate. For example, in March 1999, the Board licensed one applicant based on test scores he reportedly attained on the February 1999 examination. These test scores are shown in the Official Examination Record. However, a review of the detailed examination documents showed that this individual actually took only the part 3 examination.<sup>1</sup> There is no record of his taking the part 1 and 2 examinations, nor is there any other evidence supporting the examination scores the Board shows that he received on these examinations.

### **Examination Deficiencies Need to Be Addressed**

The Board needs to take steps to address problems with its licensing examination. One option is for the Board to revise each part of its examination to meet national testing standards. Another option is to adopt a recently developed national examination and revise only those portions of the Board’s examination that are not covered by this national examination. Alternatively, the Board could adopt the national examination and seek a statutory change to eliminate the requirement to examine subjects that are not covered by the national examination.

***The Board needs to take steps to ensure any exam it develops and administers is appropriate***—If the Board continues to de-

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<sup>1</sup> Applicants who are licensed in another jurisdiction may be allowed to become licensed by “endorsement,” which requires that they take only the part 3 examination. This individual, however, was not approved for licensure by endorsement.

velop and administer any portion of its own examination, several steps should be taken to ensure the exam meets accepted testing standards.

- ✓ First, the Board needs to appropriately determine the activities that are critical to safe naturopathic practice.
- ✓ Second, the Board needs to ensure that questions are appropriate and are written by qualified individuals. As part of this process, questions and test construction should be reviewed to ensure that questions measure competence in the critical areas, are grammatically correct, are not repeated, and do not have more than one correct answer.
- ✓ Third, the Board needs to demonstrate that the 75 percent “pass point” is an accurate division between competent and incompetent practitioners.

The Board also needs to fully document and justify any rescoring decisions. Specifically, the Board should have a testing expert review examination results and advise the Board whether questions should be removed because they are too difficult or are otherwise problematic. If problem questions are identified, any subsequent administration of the examination should be modified.

***The Board could adopt a national examination***—If the Board determines it lacks the resources to revise its entire examination appropriately, it could replace portions of it with a recently developed national examination. The national examination covers most of the subject areas Arizona statutes require to be examined. Prior to adopting the national examination, however, the Board should determine that the national examination has been proven valid and reliable.

***The Board could seek a statutory change***—In lieu of revising any portion of its examination, the Board could seek a statutory change limiting the examination subject areas required for licensure, except for jurisprudence, to only those included on the national examination. The national examination includes all but

3 of the 31 subjects that Arizona's statutes require. The 3 subjects not included on the national examination are pharmacology, jurisprudence, and internal medicine.

### **Recommendations**

1. The Board needs to develop and implement policies and procedures for ensuring that all examination documentation, including such things as test development activities, individual test results, statistical analyses, and rescoring justification, is appropriately maintained.
2. The Board needs to determine whether it will continue to use all or a portion of its own examination and, if so, work with the State Procurement Office to contract with a testing expert to ensure that:
  - ✓ The examination's content is valid;
  - ✓ Questions are appropriate and are written by qualified individuals;
  - ✓ Questions and test construction are reviewed to ensure that questions measure competence in the critical areas, are grammatically correct, are not repeated, and do not provide answers to other examination questions;
  - ✓ The 75 percent pass point is an accurate division between competent and incompetent practitioners;
  - ✓ Any rescoring decisions are made appropriately and are documented; and
  - ✓ Subsequent examinations are revised as appropriate.
3. If the Board determines it lacks the resources to correct deficiencies in its examination, it should seek a statutory change to eliminate the requirement to examine applicants in subject areas other than jurisprudence that are not included on the national licensing examination, once that examination has been determined to be valid and reliable.

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## FINDING III

## THE BOARD NEEDS TO IMPROVE COMPLAINT PROCESSING

The Board needs to improve complaint processing to ensure complaints are resolved in a timely and appropriate manner. Resolution of some complaints has been slow, resulting in a backlog of cases. Although the Board has recently made efforts to resolve timeliness problems, some additional improvements are needed. These include improving recordkeeping related to complaints and separating the investigation and adjudication processes.

### Backlog Result of Slow Complaint Resolution

Although the Board receives only a few complaints each year, at the time of this review it had developed a backlog of cases. Resolving complaints in a timely manner is important. It limits the public's exposure to possible substandard medical practice, ensures that violators quickly correct any problems, and decreases the possibility that delays will lessen the Board's ability to discipline. After auditors brought the backlogged cases to the Board's attention, the Board has begun taking action on most of them.

***Board has been slow to resolve some complaints***—The Board receives approximately 6 to 13 complaints each year. However, when this review began, 13 complaints were open. Five of the 13 complaints had been open for longer than 1,000 days. For example:

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*Five complaints had been open more than 1,000 days.*

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- ✓ The most serious of these complaints has been open for more than three years and alleges that the physician inappropriately infused hydrogen peroxide and other hazardous substances into a patient's veins and did not maintain adequate and accurate medical records. The Board received this complaint in

October 1996, but chose not to act upon it until the civil lawsuit was resolved, despite evidence that the doctor continued to perform this procedure. The Board was notified of the civil settlement in March 1999, but failed to place this complaint on the agenda for nine months, until the December 1999 meeting. It was then continued until the February 2000 meeting when the Board decided to hire an investigator to review the case.

Two factors have contributed to a slow complaint resolution.

- ✓ **First**, the Board does not ensure that complaints appear on its monthly meeting agendas in a timely manner. During 1999, complaints appeared only on the January and December agendas.
- ✓ **Second**, the Board has not used an investigator to ensure that information is obtained and reviewed in a timely manner.

Although the Board had an investigator under contract through June 1999, it did not use this person to investigate complaints during 1999. The Board indicates that the investigator was not used because she did not provide the information needed. However, no effort was made to correct this by instruction or training, nor did the Board contract with a different investigator.

***The Board has recently made efforts to improve timeliness***—After auditors brought the unresolved cases to the Board’s attention, the Board has made a greater effort to resolve them by placing these open complaints on its recent agendas. Since December 1999, the Board has resolved 11 of the 13 open complaints auditors identified. In addition, the Board is currently making an effort to contract with an investigator to review two complaints. Working with the State Procurement Office to hire an investigator on a contract basis could help to ensure that complaints are processed in a timely manner and improve the Board’s investigative and adjudicative processes.

## **Complaint Records Not Well-Maintained**

The Board's complaint records are lacking. This limits consumers' ability to gain information about practitioners, and it also affects the Board's ability to act on complaints.

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*There is no one complete source of complaints information.*

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- ✓ **Consumer information is limited**—The Board's complaint records are so limited that the Board probably cannot provide consumers with a complete, or even a recent, history of complaints and disciplinary actions against practitioners. Without this information, consumers' ability to make informed choices about practitioners is limited. For example, this review found that there is no complete source that lists all complaints received and their resolutions. Specifically, the Board could not readily locate all complaint files, nor provide a log listing complaints received, or board meeting minutes showing which complaints had been resolved.<sup>1</sup> Auditors also reviewed licensing files to determine if the Board made a permanent record of complaint resolutions in the files, but located information about the specific cases being reviewed in only 1 of 11 files.
  
- ✓ **Board's ability to act is affected**—Poor recordkeeping has also resulted in some confusion about which complaints have been resolved, and in at least one case has allowed unprofessional conduct to go unchecked. For example, in a February 2000 meeting, the Board heard complaints against two naturopaths. A long-time Board member said he thought both complaints had already been resolved before. In one instance, the naturopath who was the subject of the complaint responded that the Board had indeed previously heard this case and had dismissed it. However, in the second instance, the naturopath who was the subject of the complaint indicated that he had not previously appeared before the Board for this complaint.

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*The Board itself is uncertain which complaints have been resolved.*

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In another case, a naturopath appeared before the Board in Janu-

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<sup>1</sup> The Board eventually provided complaint logs and minutes as they were found or recreated by the executive director from old computer files; however, the logs and minutes provided were still not complete.

ary 1999 to respond to a complaint. However, at that meeting, the naturopath indicated that he had not been notified of the complaint allegations, so he was uncertain how to respond. The naturopath and his attorney, who had traveled from Tucson, agreed to waive the typical 30-day notice period if the Board could provide them with a copy of the complaint at the meeting. The Board was unable to find the complaint. This complaint was tabled and was not resolved until February 2000, when the Board reprimanded the naturopath for prescribing controlled substances using an M.D.'s prescription pad.

### **The Board Needs to Separate Its Investigation and Adjudication Processes**

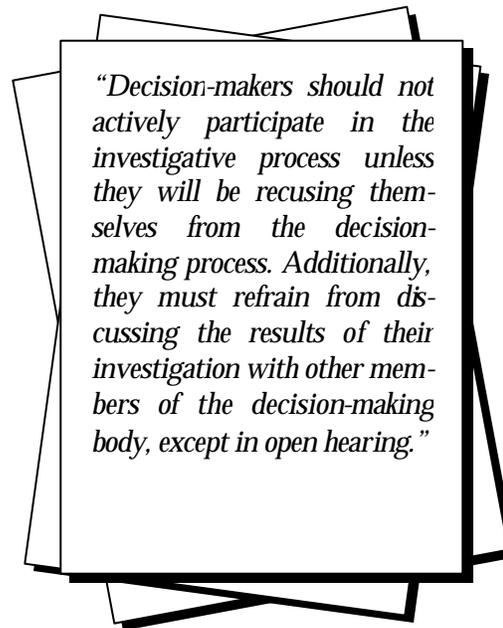
The Board also needs to separate its complaint investigation and adjudication functions. Currently, the full Board participates in both investigating and adjudicating complaints. This lack of separation can result in an appearance of unfair practice and should be changed.

***Board serves as both investigator and adjudicator***—Currently, the Board is active in complaint investigations and adjudications. The entire five-member board conducts an investigative interview with the licensee, reviews and discusses information, and then makes a decision regarding the case. This lack of separation can give the appearance of bias. For example:

- ✓ During the course of an investigative interview in February 2000 a doctor made comments that appeared to disparage the complainant's character. If the interview had been conducted earlier by a single board member or by an investigator, the interviewer could have provided the Board with an objective discussion of the case and minimized the likelihood that the negative information about the complainant could have biased the Board's decision.

***Investigation and adjudication should be separated***—The Board's existing practice is inconsistent with the Attorney General's advice contained in its *Arizona Agency Handbook* because it can give the

appearance that the Board is not resolving complaints fairly. The *Handbook* recommends:



*“Decision-makers should not actively participate in the investigative process unless they will be recusing themselves from the decision-making process. Additionally, they must refrain from discussing the results of their investigation with other members of the decision-making body, except in open hearing.”*

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*Separation can minimize the appearance of bias in board decisions.*

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Other Arizona regulatory boards, such as the Board of Medical Examiners and the Board of Behavioral Health Examiners, have separated the investigation and adjudication processes. Such a separation shields board members from information that may impact their objectivity.

There are various means by which the two processes can be separated. For instance:

- ✓ The Board could use a contract investigator, a board member, or a staff person to perform the investigations, identify potential statutory violations, and make recommendations to the Board.
- ✓ Likewise, the Board could assign one Board member or staff person to work with an investigator to explore allegations and develop recommendations to be presented to the full Board. The lead Board member should then recuse himself/herself from all other discussions and decisions regarding the complaint.

These approaches are compatible with the advice provided in the *Arizona Agency Handbook*.

### **Recommendations**

1. The Board should improve its agenda management by developing a procedure to ensure complaints are promptly placed on it, and that those complaints tabled at any meeting reappear on successive agendas until closed.
2. The Board should work with the State Procurement Office to contract for an investigator, and hire and train that investigator to perform investigations.
3. The Board should maintain complete and accurate logs of all complaints received and their resolutions.
4. The Board should ensure that all complaint files contain documentation of the complaint, the resolution, and other pertinent information.
5. The Board should ensure that licensure files contain records of any complaints and their resolutions.
6. The Board should separate its investigative and adjudication functions by:
  - a. Using a contract investigator, board member, or staff person to perform investigations, identify potential statutory violations, and make recommendations to the Board; or
  - b. Assigning a board member or staff person to work with an investigator to perform investigations, identify potential statutory violations, and make recommendations to the Board.
7. If the Board chooses to use a board member to conduct investigations or to work with the investigator, that board member should recuse himself/herself from participating in the adjudication of the case.

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## FINDING IV

# BOARD NEEDS TO STRENGTHEN OPERATIONS AND IMPROVE OVERSIGHT OF EXECUTIVE DIRECTOR

Board operations suffer from numerous problems that either have not been recognized or have not been adequately addressed. In addition to those problems already discussed in previous findings, other records are inadequately maintained, rules required by the Legislature have not been developed, and the Board has had problems staying within its personal services budget. Many of these problems are compounded by the Board's failure to adequately oversee its executive director. In addition, the Board has allowed open meeting law violations to occur, and its members have not ensured that they avoid the appearance of impropriety when participating in board decisions. Improvements are needed in all these areas.

### **Problems Have Been Neglected in Many Areas**

The Board faces substantial problems in a number of areas. Several of these problems, such as developing a thoroughly credible licensing examination and resolving complaints in a timely and complete manner, have already been discussed in earlier parts of this report (see Finding II, pages 17 through 24, and Finding III, pages 25 through 30). In addition, recordkeeping deficiencies exist in a number of other areas, rules required by the Legislature in 1992 and 1998 have yet to be developed, and the Board has had difficulty staying within its personal services budget.

***Records are lacking***—Recordkeeping, a problem already pointed out in both examination results and complaint handling, is inadequate in other areas as well. For example:

- ✓ **Meeting minutes lost**—The Board is statutorily required to maintain meeting minutes. However, the Board was initially unable to locate minutes for 1996 and 1997. During the course of the audit, auditors located most of those minutes mixed in with other documents; however, some were still missing and the executive director needed to recreate them from old computer files.
  
- ✓ **Contract files inadequate**—The Board has failed to document efforts to comply with procurement laws. For example, contract files do not contain any information showing that the Board sought bids or obtained verbal quotes from service providers such as investigators and examination question writers.

***Failure to develop rules***—Aside from a minor change in 1987, the Board's existing rules have not been changed or updated since 1984, and do not address many of the Board's responsibilities.<sup>1</sup> For example, 1992 legislation directed the Board to develop rules for approving naturopathic medical schools and training programs, but the Board has not yet done so. The Board has also not established time frames in rule for issuing licenses by December 31, 1998, as required by A.R.S. §41-1073(A). The Office of the Ombudsman—Citizens Aide reported on these issues in April 1999, and following that report, the Legislature required the Board to begin submitting reports every six months on the progress of rules development. However, the Board has made little progress toward implementing the required rules. As of March 2000, it had not yet approved a draft rules package that includes the required rules relating to schools.

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*The Board was required to adopt rules for approving schools in 1992, but has not done so.*

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***History of problems staying within personal services budget***—Since 1996, the Board has had continued difficulties adhering to its personal services budget. Because of these problems, in 1998 Joint Legislative Budget Committee staff recommended that the Board's appropriation be changed from a lump sum to modified lump sum. Under a lump-sum appropriation, the Board is not required to limit spending for particular items so long as

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<sup>1</sup> The Board updated its fee schedule in 1999; however these rules were exempted from the formal rules-making process.

there are sufficient monies available in the total budget. The modified lump-sum appropriation required the Board to adhere to the amount budgeted for certain line items, such as personal services. The Board, however, overspent its personal services line item in both 1998 and 1999. In 1998, monies from other line items were transferred to cover the shortage. In 1999, the shortage was deducted from the executive director's pay since he is responsible for managing the budget and had not taken appropriate actions to address the shortfall.

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*Greater oversight over the Board's spending may be warranted.*

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The Board's appropriation was changed back to lump sum for fiscal year 2000, but this change may warrant review. The Board is no longer required to limit spending for certain line items. However, if the Board's spending were still restricted, it appears expenditures for personal services would again exceed the amount budgeted. At the end of fiscal year 2000, the Board should revert \$5,900 in personal services monies that were earmarked, but not used, to upgrade the Board's secretarial position. However, based on the Board's current spending level, reverting these monies would cause a deficit of approximately \$4,500 in the personal services line item. To provide for greater oversight, the Legislature should consider reestablishing the modified lump-sum appropriation.

### **Oversight of Executive Director Has Been Insufficient**

Lack of oversight of the executive director has contributed to the many problems identified during the audit. The Board is responsible for ensuring that the agency fulfills its statutory responsibility to regulate naturopathic physicians. Daily administration of the Board's office and functions is performed by the executive director, who is appointed by the Board. The executive director's statutory duties include such things as maintaining records of board actions and proceedings, managing the Board's office, preparing the budget, compiling and publishing a directory, and other duties as required by the Board. This arrangement of a governing board utilizing an executive director is typical for medical regulatory boards in Arizona.

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*The Board has failed to review the executive director's performance.*

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Until recently, the executive director's unique relationship to the Board may have made it difficult for the Board to effectively exercise oversight. Prior to August 1999, the executive director also served as a Board member and officer. Under this structure, the Board may have found it awkward to assess one member's performance and to take corrective action. However, for the past eight months the executive director has been solely a board employee. The Board, though, still appears hesitant to review his performance. For example, the Board had an opportunity to complete a performance review in January 2000 but did not do so. Instead, one Board member simply read a motion to give the executive director "the maximum pay increase available." The motion was one that had been pre-printed in agenda materials that the executive director provided to the Board. There was no discussion or review by the Board.

To ensure that problems are corrected, the Board should require the executive director to submit a corrective action plan to address the deficiencies identified in this report. The Board also needs to regularly review the executive director's progress and performance. In performing this review, the Board should consider using information obtained from its recently established customer satisfaction survey and/or soliciting input from licensees and other organizations or agencies that have regular contact with the executive director. These individuals and agencies could provide useful information for the review since auditors' work has identified concerns that the executive director is commonly unavailable and non-responsive.

### **Open Meeting Law Violations Need to Be Addressed**

The Board also needs to take action to address open meeting law violations and ensure that board members with ethical conflicts of interest do not participate in decisions. Specifically:

- ✓ The Board needs to review meeting minutes to ensure that a quorum of board members was present for decisions made between August 1998 and August 1999.

- ✓ In addition, board members need to make a more conscientious effort to avoid participating in decisions where they may have a potential conflict of interest.

**Open meeting law violations**—The Board needs to review decisions made between August 1998 and August 1999 to ensure that a quorum was present to conduct business as required by the State’s open meeting law, A.R.S. §38-431(3). Effective August 1998, A.R.S. §32-1509(A) prohibited the Board’s executive director from also serving as a board member. However, when the statute became effective, the Board voted to have one of its members continue acting as the executive director until it could hire an outside individual to fill the position. Because of the statutory conflict, when this board member agreed to accept the executive director duties, he automatically vacated his board position. This individual, however, continued to act as a board member, accepting board leadership positions and participating in decisions until August 1999, when his term as a board member expired and he was replaced. At that time, the Board officially hired him as the executive director.

The Board needs to review decisions made during that one-year time period to ensure that a quorum (at least three board members, not including the executive director), was present to conduct business. If not, the Board will need to review these decisions and determine whether to ratify them. For example, in September 1998, two board members and the executive director conducted a meeting where decisions were made to issue certificates for postdoctoral and clinical training programs. For these certificates to be valid, the Board needs to ratify these decisions.

**Potential conflicts of interest should be avoided**—Board members also need to ensure that they avoid participating in decisions where conflicts of interest may exist. In the past, board members have not always recused themselves appropriately. For example, one former board member’s name and address is on file with the Corporation Commission as the business address of an organization of specialty colleges. While a board member, this individual also served as a faculty member of one of these specialty colleges. Despite this involvement, this board member made and seconded motions, and voted to approve

***Finding IV***

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training programs and graduates of this organization's colleges. This individual may have also been involved in including this organization in the Board's proposed rules as a body designated to approve specialty training programs. While it is not apparent whether these actions constitute a statutory conflict of interest, they do give the appearance of impropriety, and the Board needs to make efforts to avoid the appearance of such conflicts in the future.

## **Recommendations**

1. The Legislature should consider reestablishing a modified lump-sum appropriation for the Board.
2. To ensure management problems are corrected, the Board should require the executive director to submit a corrective action plan, including a timetable, for addressing records maintenance deficiencies in areas such as:
  - ✓ Complaints
  - ✓ Examinations
  - ✓ Contracts
  - ✓ Meeting Minutes
3. The Board should establish a procedure and regular schedule for reviewing the executive director's progress toward correcting deficiencies.
4. The Board should establish a procedure and regular schedule for reviewing the Executive Director's performance in managing the agency. As part of such a review, the Board could consider soliciting feedback from individuals, organizations, or agencies that have regular contact with the agency.
5. The Board should review decisions made between August 1998 and August 1999 to ensure that at least three board members, not including the executive director, were present to conduct business. If not, the Board will need to review the decisions made during those meetings and determine whether to ratify them.
6. During its semiannual regular meetings the Board should caution members to avoid participating in decisions where there may be the appearance of a conflict of interest.

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## SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Arizona Naturopathic Physicians Board of Medical Examiners should be continued or terminated.

**1. The objective and purpose in establishing the Board.**

The Board was established in 1935 to protect the public's health, safety, and welfare by licensing naturopaths and investigating and adjudicating complaints. Since then, the Board has also become responsible for such things as approving naturopathic schools and other training programs, and certifying students to participate in these programs. Current statutes also authorize the Board to certify naturopaths to dispense natural substances, and to certify specialists and medical assistants.

To enable the Board to fulfill its responsibilities, statute authorizes the Board to perform such activities as:

- ✓ Adopt rules for approving schools of naturopathic medicine and other training programs;
- ✓ Periodically inspect and evaluate schools and training programs, as well as naturopathic continuing education programs;
- ✓ Determine eligibility of applicants for licensure and certification; and,
- ✓ Investigate charges of misconduct and adjudicate complaints.

**2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which it has operated.**

While the Board generally processes licenses timely, this audit identified a number of other areas of ineffectiveness and inefficiency in board operations, including problems with management, the Board's licensing examination, and complaint-handling processes.

- ✓ **Licensing**—The Board appears generally timely in issuing initial licenses once complete applications are received. In situations where complete application information was received and applicants passed all required examinations, the Board took between 23 and 72 days to process licensing applications.<sup>1</sup> The overall time frame to issue a license is longer because the licensing examination is given twice per year, and applicants who are approved to take the exam must wait for the next administration. Most applicants in our sample waited approximately 70 to 80 days from the time they were approved to take the examination until the actual exam date.

The Board also appears to issue renewal licenses in a timely manner. Auditors reviewed a random sample of 33 renewal applications processed for 1999 and found that the Board typically issues renewal licenses within one week of receiving the application.<sup>2</sup>

- ✓ **Management**—The Board has not exercised sufficient oversight to ensure that day-to-day operations have been performed efficiently and effectively. Numerous problems exist, including failure to adequately maintain complaint and examination re-

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<sup>1</sup> Based on a random sample of ten initial 1998 licenses and all five initial 1999 licenses issued as of October 1999, excluding time the applicant spent waiting to take the licensing examination after being approved to do so.

<sup>2</sup> The random sample selected included 33 files, but only 25 of these files had all necessary dates available to complete this analysis.

ords, contract files, and public documents, such as meeting minutes and an annual directory. The Board has also failed to promulgate rules in a timely manner, and has not adequately monitored its budget to ensure that personal services monies have not been misspent or overspent. (See Finding IV, pages 31 through 37.)

- ✓ **Licensure examination**—The Board has not ensured that its licensure examination is a valid tool for making licensure decisions. Specifically, the Board has not ensured that the examination was developed and scored appropriately, and that it has maintained sufficient documentation to demonstrate that individuals have taken and passed all required examinations. (See Finding II, pages 17 through 24.)
  
- ✓ **Complaint processing**—The Board needs to ensure complaints are adjudicated timely and appropriately. Although the Board receives only a few complaints each year, about 6 to 13, at the time of this review it had developed a backlog of 13 cases. At least 5 of these complaints had been open for more than 1,000 days. Since auditors brought these cases to the Board’s attention, it has made an effort to resolve them. However, in the future the Board needs to better ensure that complaints are placed on agendas promptly and use an investigator to obtain information in a timely manner. The Board also needs to better separate its investigation and adjudication processes. Currently the full Board participates in investigative interviews and then adjudicates the cases. Although not illegal, this practice can give the appearance of bias in the Board’s decisions. (See Finding III, pages 25 through 30.)

**3. The extent to which the Board has operated within the public interest.**

The Board generally has not operated in the public interest to protect the public health, safety, and welfare. As discussed in Finding II, pages 17 through 24, the Board’s

licensing examination does little to ensure that licensed naturopaths are competent to practice. In addition, the Board has not resolved some consumer complaints in a timely manner and has not ensured that it maintains adequate records to provide the public with complete information about doctors' complaint histories (see Finding III, pages 25 through 30). The Board also has not ensured that public records are readily available, that state monies are appropriately spent, and that open meeting law requirements are met (see Finding IV, pages 31 through 37).

Finally, the Board has not taken disciplinary action against naturopaths who fail to complete the required 15 hours of continuing medical education (CME) per year. Instead, the Board has renewed licenses of naturopaths who have agreed to complete 30 CME hours during the next license year. Since failure to comply with board rules is defined as unprofessional conduct under A.R.S. §32-1501(22), the Board should take disciplinary action in these types of cases in the future.

**4. The extent to which rules adopted by the Board are consistent with the legislative mandate.**

According to the Governor's Regulatory Review Council (GRRC), the Board has not adopted a substantial number of rules necessary to fulfill its statutory mandates. The list of needed rules that GRRC identified is approximately six pages long (the full text has been provided to the Board). The needed rules include provisions for such things as approving naturopathic medicine schools, and clinical, internship, preceptorship, and postdoctoral training programs; inspecting these educational programs; licensing time frames; approving alternative licensing examinations; and addressing challenges to the Board's examination. As part of its review, GRRC also found that the rules that the Board does have in place, with the exception of those relating to fees and one minor amendment in 1987, have not been updated since 1984.

The Legislature has also noted the Board's failure to adopt rules, some of which have been required since 1992, and in May 1999, required the Board to begin reporting every six months on its progress toward implementing rules. The Board has begun drafting rules, however, it has not yet approved a draft rules package to be submitted to GRRC that includes the required school approval rules.

- 5. The extent to which the Board has encouraged input from the public before adopting its rules, and the extent to which it has informed the public as to its actions and their expected impact on the public.**

According to Board staff, the Board has encouraged public input in drafting its proposed rules. The Board held meetings throughout the State in July and August 1999 to obtain input from interested parties and stakeholders. The Board has also heard comments about its proposed rules during its regular meetings, which are also open to the public. The Board also plans to make the proposed rules available on the Web site it is currently developing.

- 6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has sufficient statutory authority and disciplinary options to investigate and adjudicate the few complaints it receives each year; however, at the time of this review, it had developed a complaint backlog (for further information, see Finding III, pages 25 through 30).

7. **The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

A.R.S. §32-1556 authorizes the Attorney General's Office to prosecute actions and represent the Board. The Board currently is represented by one assistant attorney general.

8. **The extent to which the Board has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.**

Numerous changes have been made to agency statutes over the years. Some of these changes have modified the naturopathic scope of practice, while others have enhanced the Board's ability to fulfill its statutory mandate. For example:

- ✓ During the 1992 legislative session, the practice of naturopathic medicine was redefined, and this change appears to have expanded the scope of practice beyond its traditional boundaries (see Finding I, pages 9 through 13).
- ✓ In 1995, the Board received authority to issue non-disciplinary letters of concern in adjudicating complaints where there was insufficient evidence to support disciplinary action.
- ✓ In 1996, the Board was required to expand its annual directory to include a copy of the naturopathic statutes and a list of natural substances that could be dispensed by certified naturopaths. In addition, statutes defining unprofessional conduct were expanded, and renewal schedules were set for certificate holders. The Board was also authorized to recognize specialists in naturopathic medicine.
- ✓ In 1998, the definitions of naturopathic medicine and the practice of naturopathic medicine were amended,

and definitions of unprofessional conduct were further expanded. In addition, the Board's executive director was prohibited from also being a board member. This statutory change also transferred statutory duties from the Board to the executive director. Requirements for the Board's licensing examination were also substantially changed. The Legislature established a three-part examination covering 31 subjects and required applicants to attain a 75 percent passing score on each part, rather than each subject.

- ✓ In 1999, the Board was required to adopt rules for approving naturopathic medical schools and approving and inspecting other training programs. The Board was appropriated monies for conducting these inspections; however, it has not yet hired an inspector. The Board was required to report to the Legislature every six months on its progress toward implementing rules.

**9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the Sunset review statute.**

As discussed in Finding I, pages 9 through 13, the Legislature should consider reviewing the naturopathic scope of practice, including prescribing authority and specialty designations, and clarifying the statutes as appropriate. In addition, the Legislature should consider establishing an independent body to develop and/or review the formulary of natural substances that naturopaths are allowed to prescribe.

The Legislature should also consider modifying the following statutes:

- ✓ A.R.S. §32-1551 to grant the Board authority to subpoena medical records as part of its complaint investigations; and,

- ✓ A.R.S. §32-1525 to enable the Board to keep its licensure examination and examinees' scores confidential. Currently, at least five other regulatory boards, including those that oversee podiatrists and optometrists, have similar provisions.

**10. The extent to which termination of the Board would significantly harm the public health, safety, or welfare.**

Terminating the Board would not significantly harm the public's health and safety since the practice of medicine would continue to be regulated by the Allopathic Board of Medical Examiners and the Board of Osteopathic Examiners in Medicine and Surgery. Naturopaths could continue to perform many traditional activities, but would no longer be allowed to act as primary medical care providers.

However, terminating the Board could harm the public's welfare by potentially limiting access to alternative medical care. Naturopathy's focus is on healing through natural methods and techniques, which is somewhat different from traditional allopathy. If the Board were terminated, consumers' access to this alternative approach would be limited. In addition, some of the services naturopaths now perform, such as prescribing drugs, could be performed only by other licensed practitioners, such as allopathic (M.D.) or osteopathic (D.O.) physicians. This could decrease consumer access to medical services in general by reducing the number of practitioners.

**11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.**

This audit found that given the apparent scope of practice, the current level of regulation exercised by the Board is generally appropriate. However, as discussed in Finding I, pages 9 through 13, only ten other states regulate naturopathy, and the scope of practice in these other

states is limited. Further, some activities traditionally performed by naturopaths, such as massage, dietary assessment and counseling, and acupuncture, can be legally performed by unlicensed individuals, or individuals licensed in other professions, so long as they do not call themselves naturopaths.

**12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

The Board has contracted for services such as computer consulting and database development, examination development, rules writing, and complaint investigation. However, the Board did not use the services of its contract investigator in 1999, which may have contributed to a complaint backlog (see Finding III, pages 25 through 30). The investigation services contract expired in June 1999 and has not been replaced. The Board should again contract with an investigator because using contract personnel in this and other positions can be cost-effective since the services are obtained on an as-needed basis.

When issuing any new contracts, the Board needs to comply with state procurement laws. Auditors reviewed 12 contracts for services and found there is no evidence that the Board complied with state procurement laws in obtaining these contracts. Specifically, the files do not contain evidence that verbal or written price quotes were obtained, or that requests for proposals were issued. Although there is no evidence of competition, there is also no justification in the files for sole sourcing. In addition, there is nothing in the examination development contract files to indicate that the amount that the Board paid question writers was appropriate. It appears that the Board determined the price it would pay, and then sought question writers who would agree to provide questions for this amount. According to the State Procurement Office, Boards should not dictate prices, but should seek pricing quotes from vendors and use these as criteria in awarding contracts.

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## Agency Response

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State of Arizona  
Naturopathic Physicians  
Board of Medical Examiners  
*"Protecting the Public's Health"*

1400 West Washington · Suite 230 · Phoenix, Arizona 85007 · Telephone · (602) 542-8242 Fax · (602) 542-3093

June 12, 2000

Debra K. Davenport, Auditor General  
State of Arizona  
2910 North 44th Street, Suite 410  
Phoenix, Arizona 85018

Re: Performance Audit Report and Sunset Review Findings

Dear Ms. Davenport:

Board members reviewed the Performance Audit Report of the Board and Sunset Review Findings. We appreciate the opportunity to respond to the Audit Report and Sunset Findings. We also recognize the diligent effort put forth by your staff in their efforts to understand the naturopathic medical profession and the Board's regulation of the profession.

Board members do not agree with all of the remarks stated in the Report and recognize that perceptions regarding the regulated profession are oftentimes misleading. Hopefully, our Agency Response will allow persons reading the Report an opportunity to come to a reasonable conclusion regarding the Board and difficulties faced by the agency and its staff.

Thank you again for the efforts of your staff to improve the performance of the Board.

Sincerely,  
Naturopathic Physicians Board of Medical Examiners

Glenn T. Ozalan, NMD  
Acting Chairman of the Board

GTO/jlb

Enclosure: Agency Response to Performance Audit Report and Sunset Review Findings

The Auditor General's Report recommended several changes to Board practices, rules, and statutes. The Report points out that Board should take disciplinary actions against naturopathic physicians who do not comply with the requirement to attend continuing education courses and the Board intends to do so. The Report also states Board needs to adopt numerous rules relating to issues such as licensing time frames, as well as the criteria it will use for approving schools, training programs, and specialty designations and the Board is in the process of completing the rules. Board agrees the Legislature should consider amending Board statutes to allow Board to subpoena medical records as part of complaint investigations and to allow Board to keep its examination and examinees' scores confidential.

The Board regulates 222 naturopathic physicians, 205 naturopathic medical students and graduates in clinical and preceptorship training programs and 102 training locations.

### The Legislature Has Reviewed Board Statutes On Several Occasions Over The Past 8 Years

The Auditor General is requesting the Legislature to review Board statutes and determine if what the legislature enacted was really their intent. However, the Legislature has reviewed Board statutes on several occasions since the last Sunset Review and made amendments to naturopathic medical laws as they deemed necessary. For example, in 1999 the Legislature amended the definition "practice of naturopathic medicine" in A.R.S. § 32-1501 by striking the word "physiotherapy" and inserting "physical agents and modalities". This change was not at the request of the Board or the Arizona naturopathic medical profession.

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**To ask current Legislators to clarify statutory amendments dating back to 1992 is asking current Legislators to determine if prior Legislators knew what they were voting on when they enacted the legislation.**

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**The Report fails to state a significant finding that only 2 cases of medical malpractice have been reported in the past 13 years.**

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**Statutory language is clear regarding specialties.**

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The Auditor General is requesting the current Legislature to clarify statutory amendments dating back to 1992. Many "seemingly minor statutory changes" that are of concern to the Auditor General were made by Legislators as they deemed necessary. For example, in 1992 the definition "practice of naturopathic medicine" was amended in a Senate Committee without request from the Board or the profession and the word "including" was added. *The Auditor General's findings suggest the Board should instruct Legislators on whether they may or may not amend the naturopathic medical practice act.*

To ask current Legislators to clarify statutory amendments dating back to 1992, as recommended by the Auditor General, is nothing more than asking current Legislators to determine if prior Legislators knew what they were voting on when they enacted the legislation.

**Specialties** - Medical professions do not remain static and advances in the diagnosis and treatment of disease occur each year. The same is true in naturopathic medicine. Each year more and more graduates of naturopathic medical schools are accepted for training in residence programs including family medicine, cardiology, pediatrics and other specialties. Proposed Board rules do include numerous specialty areas of practice for purposes of regulating naturopathic physicians for purposes of regulation. Statutory language is clear regarding specialties.

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**To protect the public, the Legislature did in fact intend for the Board to regulate specialty activities by naturopathic physicians.**  
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To protect the public, the Legislature did in fact intend for the Board to regulate specialty activities by naturopathic physicians. The Legislature recognized it to be appropriate for the Board to regulate naturopathic medical specialties by enacting the provisions of A.R.S. § 32-1529. By specifically defining "specialist" in A.R.S. § 32-1501 and making it unprofessional conduct for naturopathic physicians to call themselves a specialist "if such was not a fact".

Chiropractors practice family practice, neurology and orthopedics. Physical therapists practice family practice and other specialties. These practitioners practice those specialties as chiropractors and as physical therapists. Their use of those specialty titles does not authorized them to practice those specialties in a manner that a MD or a DO practice the same specialties. The same is true of naturopathic physicians practicing in specialty areas.

Naturopathic physicians are not being authorized by Board rule to practice naturopathic specialties in the manner that a MD or a DO practice their specialties. *A doctor of naturopathic medicine practices naturopathic family medicine not allopathic family medicine or osteopathic family medicine.*

Without statutory provisions and proposed Board rules for naturopathic specialties, a minimum number of naturopathic physicians or just 1 in the case of a limited liability corporation could form a specialty and board certify themselves regardless of whether they are properly trained, qualified and certified by a specialty board. The proposed Board rules, and more specifically the statutory provisions, act to prevent and prohibit such from occurring. The statutory provisions and proposed Board rules relating to specialties are proper in order to regulate the profession.

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**The Legislature has reviewed Board statutes several times relating to the authority of naturopathic physicians writing prescriptions.**  
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**Natural Substances** - *Federal and state law provides that articles intended for use in the diagnosis and treatment of patients are "drugs".* The Board is mandated by law to publish a list of natural substances in its annual directory that may be dispensed by a naturopathic physician. The Legislature has reviewed Board statutes several times relating to the authority of naturopathic physicians writing prescriptions. As recently as 1998, the Legislature amended the provisions of A.R.S. § 32-1581 to clarify that doctors of naturopathic medicine may dispense, administer and prescribe natural substances in the diagnosis and treatment of patients. In 1998, the Legislature also clarified that such patient prescriptions may be filled by a pharmacy of a patient's choice or by the physician. The term "natural substance" is defined within the statutory language of A.R.S. § 32-1581 and authorizes doctors of naturopathic medicine to use natural substances in the diagnosis and treatment of patients.

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**The term "natural substance" is defined within the statutory language of A.R.S. § 32-1581.**  
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Natural substances used in the diagnosis and treatment of patients are "drugs". The Board requested the Legislature to consider defining the term "natural substance". Certain groups advised the Legislature it was unwise to have a separate statutory classification of drugs and therefore the term "natural substance" was defined within the statutory language of A.R.S. § 32-1581 to provide that doctors of naturopathic medicine may use natural substances in the diagnosis and treatment of patients.

All of the natural substance articles approved by the Board are from a natural origin. The List of Natural Substance Articles approved and printed in the Annual Directory of Naturopathic Medicine includes vitamins, minerals, vaccines, antibiotics, oral contraceptives, anabolic steroids, and controlled substances such as morphine and cocaine, that are from a natural origin.

The United States Department of Justice Drug Enforcement Administration determined it was proper for naturopathic physicians not only in Arizona but in other states as well to prescribe controlled substances that are of natural origin.

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**All of the natural substance articles approved by the Board are from a natural origin.**

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Board legal counsel recommended the List of Natural Substance Articles should be established in administrative rules and the Board's current proposed rule packet includes adopting the List of Natural Substance Articles in rules. Other naturopathic licensing agencies compliment the Board on its list of natural substances. Those agencies indicate their intent to update their natural substance formularies since they fail to list natural substance articles that may be administered, dispensed and prescribed by their naturopathic physicians.

## Board Recognizes Problems With Licensing Examination

The Board is required by law to administer two licensing examinations each year. In 1997, the Board faced extreme difficulties with limited resources to develop and administer its own licensing examinations when the Board was unable to approve a new contract with an examination vendor.

*There was no national board of examiners for the Board to turn to for assistance.* The money appropriated to develop the licensing examination was \$2400. The Board did the best job it could do within its limited resources.

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**The Board did the best job it could do within its limited resources. There was no national board of examiners for the Board to turn to for assistance.**

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**The Board could not approve the examination vendor contract without approval from the Contracts Division in the Office of the Attorney General.**

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The vendor previously used by the Board submitted a proposed contract that the Contracts Division of the Office of the Attorney General could not approve since the vendor requested an unlawful delegation of authority relating to applicants for examination and for examination challenges required by Arizona law. Other problems with the vendor were requiring the Board to mail, receive and process vendor applications for examination and for the Board to collect money for the examinations in the vendor's name and to transmit the money to the vendor. The Office of the Attorney General informed the Board it was improper for a state agency to mail, receive and process vendor applications and collect examination money for a vendor and transmit them to a vendor. The Board could not approve the examination vendor contract without approval from the Contracts Division in the Office of the Attorney General.

*From 1995 to 1999, the Board spearheaded a request for naturopathic licensing agencies to establish a national board of examiners.* In 1999, a national board was organized by naturopathic licensing agencies and the Board has a member representative on the North American Board of Naturopathic Examiners.

NPLEX, Inc., a company that has been in the business of examination development and scoring for licensing agencies since 1988, is on contract for examination development and scoring for the national board. The national board is being accepted by or is in the process of being accepted by naturopathic licensing boards in Canada and the United States.

The Board has recognized the North American Board of Naturopathic Examiners as a national board of examiners and this will correct problems associated with the Board's licensing examination. The Board accepts examinations administered by the national board for Part One and Part Two.

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**The Board has recognized the North American Board of Naturopathic Examiners as a national board of examiners and this will correct problems associated with the Board's licensing examination.**

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The national board informed the Arizona Board that it examines in the subjects of dermatology, ophthalmology and otolaryngology, geriatrics, infectious diseases, pediatrics, obstetrics and gynecology, neurology and orthopedics under physical and clinical diagnosis. Psychiatry is examined under the subject of psychology and lifestyles counseling and the subject of physical medicine includes rehabilitation. The Board will utilize national board examinations for Part III clinical medical science examinations in the subjects of emergency medicine and minor surgery, laboratory diagnosis and diagnostic imaging, clinical nutrition, botanicals and diet therapy. The Board is negotiating with the national board to provide examinations in the subjects of internal medicine and clinical pharmacology. With these changes, the Board would no longer be conducting examinations.

In the event negotiations with the national board for the examination subjects of internal medicine and clinical pharmacology are not completed prior to August 2000 examinations, the Board will administer the 2 examination subjects. As a cautionary step, the Board's Examination Committee is currently reviewing how it will develop, administer and score the internal medicine and clinical pharmacology examinations.

## Complaints Have Been Entered Into The New Database Program

When the performance audit was taking place a new database program was being programmed and updated.

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**Consumer complaints, complaint logs and examination information did not transfer to the new database program.**

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The hard drive from the old computer was installed in the new computer but was of no use in transferring old database information relating to complaints and examinations into the new program. Consumer complaint information, complaint logs and examination information did not transfer to the new database program. The executive director spent numerous hours in obtaining the necessary information from the outdated database and word-processing program to provide information to the auditors. Information was not re-created as suggested in the Report.

**Cases referred to in the Audit Report** as being open for more than 1,000 days are:

1. A consumer complaint involved an allegation of malpractice. Acting on advice of legal counsel, the Board agreed it would not hear the allegations until the civil matter was heard by

the court or settled. The Board received conflicting information from the physician's attorney and the complainant's attorney as to when the case settled and was accepted by the court. When appropriate information was received, the complaint was placed on the Board's agenda. This complaint is currently under review by Board members.

2. In the consumer complaint listed above, information in that complaint indicated the physician used an associate MD's prescription pad to write a prescription for a controlled substance. At the request of the Board the executive director opened an investigative file and an investigator was retained. The investigator obtained investigative reports from the Drug Enforcement Agency regarding the prescription issue and submitted an investigative report to the Board. When the matter came before the Board the physician's attorney stated his client had never received proper Notice of Complaint. The physician's attorney said the allegation was part of the consumer's complaint of alleged malpractice and the allegations were not to be heard by the Board until after the civil case was heard by the court. The Board's agenda item incorrectly listed CLN indicating a Complaint instead of INV that indicates an investigation. The executive director, at the Board meeting, informed Board members and legal counsel of the agenda item mistake except the physician and his attorney were sent proper notice of the investigative interview and the informal interview. When legal counsel requested all complaint information regarding the physician at the Board meeting, the secretary had left the meeting and the director went to the secretary's office to retrieve the files and found a note that the secretary had resigned immediately. The executive director was unable to locate all the complaint information relating to the physician that measured approximately 12 inches in height and informed the Board and legal counsel. Legal counsel advised the Board that the investigation apparently related to the civil case and should wait until the court hears the civil case. When the Board received information regarding settlement of the civil case, the Board concluded the investigation and the physician agreed to enter into a consent agreement regarding the prescription issue.
3. A consumer complaint, case number 96-002, was received on April 27, 1996 and concluded on August 18, 1997. The investigation and hearing was combined with case number 95-006. The Board heard the matter and issued letters of concern to the physician. Case number 96-004 involved the same physician who had failed to return a patient's telephone call in a timely manner. When contacted about the case, the patient complainant said she only filed the complaint against the doctor at the request of a medical student to cause the doctor to have a lot of complaints before the Board. The Board's Unprofessional Conduct Review Committee heard the complaint and received testimony from the physician. The Chairman of the Committee presented an oral report to the Board at a board meeting. The Board accepted the Committee Chairman's oral report except meeting minutes do not reflect the complaint being dismissed and the complaint was brought back before the Board and dismissed. Total days between receipt of complaint and final conclusion were 526 days.
4. Case number 98-009 involved a consumer complaint who requested the Board to require a naturopathic physician to reimbursement her for health care expenses to a chiropractor for injuries allegedly sustained during a physical examination and by the physician and a naturopathic medical student. The Board has no authority to require reimbursement of expenses charged by other health care providers. After an initial investigative hearing before the Board with the complainant and physician, members were concerned of possible malpractice and requested patient medical records relating to the medical student and the

supervising physician records of that student. The custodian of records attempted to invoke federal law stating student educational records may only be released by student consent. During the time of obtaining the medical records, the supervising physician moved out of state and the medical student graduated. After the out-of-state supervising physician responded to the Board, the Board completed its investigation. An informal interview was conducted and the Board again took testimony from the consumer but found no act of malpractice and issued a letter of concern to the physician. Total days between receipt of complaint and final conclusion were 498 days.

5. Case number 97-001 involved an investigation based on a December 2, 1996 letter received from a consumer that failed to specify any particular allegation against a naturopathic physician but contained copies of letters and notices of demand the consumer had sent to the doctor. An investigation file was open and a complaint form was sent to the consumer to obtain complaint allegations. The purpose of the complaint form was to assist Board members in determining the consumer allegations. The form was returned in January 2000 and the consumer stated the complaint did not involve unprofessional conduct relating to diagnosis and treatment by the doctor. In February 2000, the Board heard the complaint and dismissed it by concluding there was insufficient evidence to support findings of unprofessional conduct as defined by law.

**Board staff is able to provide consumers with a complete and recent history of complaints and disciplinary actions against naturopathic physicians.** *The Board's computer system is now updated.* Board complaint records were limited at the time of the Performance Audit since the computer system was being updated and complaint information could not be transferred.

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**Consumer information and logs had to be manually typed into the new database program.**

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Complaint information and logs had to be manually typed into the new database program. Poor record keeping regarding complaints resulted from a prior secretary, without authorization, re-lettering and renumbering complaints and investigation files to calendar years instead of maintaining the records on a fiscal year basis. The prior secretary also caused confusion by re-lettering and renumbering investigation files as complaint files and moving some closed complaints to storage.

Another part of the confusion regarding complaints was that official Board action letters and orders regarding physician and naturopathic medical student complaints were placed in the physician or student file but not in the complaint or investigation file. *The executive director cleared up the confusion by making photocopies of the letters and orders and placing them in the appropriate complaint or investigation file.*

#### **Changes in investigation and adjudication functions :**

The Board intends to request the Legislature amend its informal interviews by requesting similar statutory language enacted for the Osteopathic Board of Examiners in Laws 2000, Chapter 176, HB 2158. Also, the provisions of Laws 2000, Chapter 113, SB 1435, requires complaints relating to revocation and suspension of licenses and certificates issued to persons regulated by the Board to be forwarded to the Office of Administrative Hearings.

Legal counsel recently advised Board members on conducting investigative interviews. The Board now assigns a member as a lead board member to assist in investigative interviews and to work with the

investigator. When the case comes before the Board the member does not participate in hearing the case and submits a recusal form to the Board. This is consistent with the Attorney General's advice contained in the Arizona Agency Handbook.

## Board Reviewed its Operations and Oversight of the Executive Director

### **Board did not find fiscal management problems:**

Fiscal management problems do not exist. The problems mentioned in the Report relate to personal services for FY 96/97 paid in 1998 and personal services for FY 98/99 paid in 1999. It was necessary for the Board to request a supplemental appropriation for personal services and the Board received the supplemental appropriation after the Legislative determined the request was necessary. The Board is on a biannual budget and submits its budget request 22 months prior to its second fiscal year of operations.

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**The findings relating to personal service do not demonstrate fiscal management problems.**  
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**The Report fails to mention appropriated funds reverted at the end of its fiscal years that was not spent by the Board.**  
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The Board contracts with another state agency for payroll services. In FY 98/99 the director learned that personal services exceeded the amount appropriated and notified the Office of Strategic Planning and Budgeting and the Joint Legislative Budget Committee. The Director requested any excess personal services be deducted from his pay. The findings relating to personal service do not demonstrate fiscal management problems. The Report fails to mention the appropriated funds reverted at the end of its fiscal years that was not spent by the Board. The funds reverted demonstrates proper fiscal management, not mismanagement.

### **Naturopathic Medical School Rules:**

*The Naturopathic Physicians Board of Medical Examiners has no authority to license naturopathic medical schools, only the Arizona State Board for Private Postsecondary Education has authority to approve and license naturopathic medical schools.* The Report states the Board needs to address the 1992 legislative directive for the Board to adopt rules for approving naturopathic medical schools. On several occasions the Board has attempted to address the legislative directive for the Board to adopt rules for approving naturopathic medical schools. Rule writers for the Board experience difficulty in writing rules regarding naturopathic medical schools since the mandate and A.R.S. § 32-1555(4) conflicts with the approval, licensing and regulatory authority of the Arizona State Board for Private Postsecondary Education. The Chairman of the Governor's Regulatory Review Council sent a letter to the Legislature and recommended that Board statutes be amended to correct the statutory conflict.

In 1992, a new naturopathic medical school being established in Arizona asked if the Board or the Arizona Board for Private Postsecondary Education would be regulating the school. Legal counsel informed the Board that it had no authority to license naturopathic medical schools and its authority was limited to approving a school's educational curriculum. The Board approved the school's curriculum for its doctor of naturopathic medicine program.

In 1996, the Board for Private Postsecondary Education requested information from professional licensing agencies about their regulation of their respective professional schools. At the request of the Board, the Office of the Attorney General issued a memorandum that again informed the Board it had limited authority over naturopathic medical schools and should inform the Board for Private Postsecondary

Education of its limited authority. The Board informed that agency of its limited authority to approving naturopathic medical schools educational curriculums.

Board attempts to amend the legislative mandate to provide that it only approves educational curriculums have been opposed by the Arizona naturopathic medical profession under a false assumption that such amendment would allow non-accredited schools to proliferate in Arizona.

An existing Arizona naturopathic medical school opposed another naturopathic medical school. Some naturopathic physicians and students believed the Board should determine if a new naturopathic medical school should be licensed and the Ombudsman Citizens' Aide Office received 14 anonymous telephone complaints that the Board should not allow a new school to exist since it had not adopted rules to approve schools. That school was under jurisdiction of the Arizona Board for Private Postsecondary Education not the Naturopathic Medical Board. The Ombudsman Office issued a report that the Board had failed to adopt rules to approve schools.

A 1999 House Bill that would have corrected Board language was amended in the Senate to reinsert language that the Board shall adopt rules to approve naturopathic medical schools.

Naturopathic medical schools question why the Board should have the same or similar requirements that are currently provided for in A.R.S. § 32-1501 which defines "approved school of naturopathic medicine" and requires an approved school to be:

- (a) Accredited or a candidate for accreditation by an accrediting agency recognized by the United States secretary of education as a specialized accrediting agency for schools of naturopathic medicine or its successor.
- (b) Accredited or a candidate for accreditation by an accrediting agency recognized by the council for higher education accreditation or its successor.

Naturopathic medical schools and Board rule writers agree it is redundant for the Board to adopt rules that equal statutory requirements when an Arizona naturopathic medical school meets either (a) or (b) as listed above or is licensed by the Board for Private Postsecondary Education.

The Board recommends the statutory requirements to adopt rules for the approval of naturopathic medical schools be amended to accurately reflect the Board authority to approve educational curriculums of naturopathic medical schools.

The Board has proposed rules relating to approving naturopathic medical schools and intends to open a rule docket in July 2000.

**Time frame rules:**

The Board is in the process of responding to the legislative directive to establish time frames for issuing licenses as required by Laws 1998, A.R.S. § 41-1073(A).

In May 1999 the Board's rule writer submitted a proposed rule packet for time frame rules and the Board was preparing to open a rule docket for adoption of those rules. However, when the Legislature amended House Bill 2484 and again mandated the Board to adopt rules for the approval of naturopathic medical schools the Board chairman placed the time frame rules on hold. The reason was the Governor's Regulatory Review Council only wants one rule package from an agency at one time if any new rule amends any current or proposed rule that is being considered by the Council. Board rules relating to

naturopathic medical schools would require amending rule definitions. The Chairman held the time frame rules to include rules to approve naturopathic medical schools required by the May 1999 HB 2484 Legislative mandate.

From July to September 1999, the Board held meetings in Flagstaff, Tucson and Phoenix to obtain public input from the public. In October 1999, the executive director submitted an action plan to the Governor, the President of the Senate, the Speaker of the House, and, the Ombudsman Citizens' Aide Office. The director's action plan indicated that no later than January 2000 the Board would submit a completed rules packet including time frame, school and specialty rules to the Governor's Regulatory Review Council.

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**The proposed rule packet is undergoing final review and a cost impact statement is being prepared. The anticipated date for opening a rule docket is July 2000.**

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The action plan submitted was slowed down by requests from naturopathic medical schools, naturopathic medical students and naturopathic specialty organizations requesting additional time for public testimony and the proposed rules packet was not completed until the Board's April 30, 2000 meeting. The proposed rule packet is undergoing final review at the current time and a cost impact statement is being prepared. The anticipated date for opening a rule docket is July 2000.

#### **Executive Director Oversight:**

The Board knows that problems listed in the Audit Report are not compounded by the Board's failure to oversee its executive director. The director has no authority to adopt rules and has been extremely diligent in moving the Board forward to adopt time frame, school and specialty rules identified in the Audit Report.

The Board also knows the performance audit was conducted when the Board's computer system was being upgraded with a new database program. Board members understand the confusion and frustration by the auditors'. The Board also understands the confusion regarding complaint information, complaint logs, examination information and other data that could not be transferred from the old database system to the new database system. When a prior secretary changed, re-lettered and renumbered complaint and investigation files, without authorization to calendar years and then changed them back to fiscal years that CLN and INV numbers did not match prior meeting minute records, Board letters and orders for those cases. Board members are aware a prior secretary rearranged the Board office 3 times without authorization in a period of one year and separated and transferred complaint files, meeting minute records and other files from the secretary's office to the director's office, to storage and hallway file cabinets. After she rearranged her office and moved files the 2nd time on a weekend the director informed her that she needed to request permission. The secretary again rearranged furniture and moved files on a weekend with assistance of her family members "to make things better". The director again informed her that prior approval was needed to move and rearrange the office and transfer files.

#### **Board member listed as a faculty member by a specialty college:**

The Board was made aware by auditors that a specialty college listed a Board member on its faculty list because the member spoke on jurisprudence relating to naturopathic medicine and reportable diseases, injuries and wounds to a specialty college class. The Report finding is not applicable, does not constitute a conflict of interest or act to violate the open meeting law since it is not uncommon for members to be asked to speak at public and professional meetings.

#### **Board secretary-treasurer acting as head of agency:**

Pursuant to A.R.S. § 32-1503(D), a Board member elected as secretary-treasurer may serve as administrative head of the Board and assume the duties as acting executive director. When new legislation became effective the elected secretary-treasurer served as administrative head of the board as provided

for by law. Pursuant to A.R.S. § 32-1503(E), the Board Chairman established an Executive Director Search Committee and the Committee advertised the position in a newspaper, received applications and interviewed applicants for the position.

### Auditor General's Finding I Recommendations:

1. The Legislature should consider reviewing A.R.S. § 32-1501(17) and (20) to determine whether the current scope of practice is appropriate and clarify the statutes as needed to more clearly outline acceptable practices.

#### **Agency Response:**

The Board can not agree or disagree with this recommendation. The Legislature has authority to review Board statutes at any time and in fact has done so numerous times in the past 8 years. The Board does not feel it should request current Legislators' to determine the intent of prior Senators and Representatives for the past 8 years. **The Report is concerned about practice authority but fails to report that only 2 medical malpractice cases have been reported in the past 13 years.** Even though this information was available, the Report recommends the Legislature to revisit practice authority granted to naturopathic physicians.

2. The Legislature should consider amending A.R.S. § 32-1501 to define "natural substances," and thereby clarifying what naturopaths may prescribe.

#### **Agency Response:**

The Board can not agree or disagree with this recommendation. The Legislature may review Board statutes at any time. The Legislature, as recent as 1998, reviewed A.R.S. § 32-1581 and authorized doctors of naturopathic medicine to dispense, including administering and prescribing, natural substances to diagnose and treat a patient. Subsection C of § 32-1581 was specifically amended in 1998 to clarify that prescriptions issued by the physician could be filled by the doctor or by a pharmacy chosen by the patient. *The Legislature knows that federal and state law defines "drug" to include any article that is used in treating a disease and that naturopathic physicians have had such authority for more than 15 years.*

3. The Legislature should consider establishing an oversight committee consisting of naturo-paths, pharmacists, medical doctors, and others as the Legislature determines necessary, to develop and/or review any formulary considered for use by Arizona naturopaths.

#### **Agency Response:**

The Board can not agree or disagree with this recommendation. The Legislature has authority to establish an oversight committee if they desire. Since 1985, naturopathic physicians have administered, dispensed and prescribed natural substances regulated by law as drugs. *The Board questions why an oversight committee is needed some 15 years later.*

4. The Board should adopt its formulary in rule to allow for public comment and input.

#### **Agency Response:**

The findings of the Auditor General is agreed to and the audit recommendation will be implemented.

5. The Board should adopt rules outlining the standards for approving specialty training programs and certification before accepting and approving applications for specialty schools, training programs, and certification.

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

**Auditor General's Finding II Recommendations:**

1. The Board needs to develop and implement policies and procedures for ensuring that all examination documentation, including such things as test development activities, individual test results, statistical analyses, and rescoring justification, is appropriately maintained.

**Agency Response:**

The finding of the Auditor General is not agreed to, but the recommendation will be implemented. The Board has recognized the new national board of examiners for Part One and Two and is negotiating for development of Part Three by that national board.

2. The Board needs to determine whether it will continue to administer all or a portion of its own examination and, if so, work with the State Procurement Office to contract with a testing expert to ensure that the examination's content is valid; questions are appropriate and are written by qualified individuals; questions and test construction are reviewed to ensure that questions measure competence in the critical areas, are grammatically correct, are not repeated, and do not provide answers to other examination questions; the 75 percent pass point is an accurate division between competent and incompetent practitioners; any rescoring decisions are made appropriately and are documented; and subsequent examinations are revised as appropriate.

**Agency Response:**

The finding of the Auditor General is not agreed to, but the recommendation will be implemented. The Board has recognized the new national board of examiners and is negotiating development of Part Three examinations by that national board.

3. If the Board determines it lacks the resources to correct deficiencies in its examination, it should seek a statutory change to allow it to accept the national licensing examination, once that examination has been determined to be valid and reliable, as qualification for Arizona licensure

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. The Board has recognized the new national board of examiners and is negotiating development of Part Three examinations by that national board.

**Auditor General's Finding III Recommendations:**

1. The Board should improve its agenda management by developing a procedure to ensure complaints are promptly placed on it, and that those complaints tabled at any meeting reappear on successive agendas until closed.

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation has been implemented. In addition, Board members have a 3-ring complaint book that contains any current complaint information. The book is updated when additional information is received from complainants, physicians and investigators. Supplemental information is provided to Board members for their review prior to Board meetings.

2. The Board should work with the State Procurement Office to contract for an investigator, and hire and train that investigator to perform investigations.

**Agency Response:**

The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented. The Board is waiting for approval from the Personnel Office to fill the position of Program Compliance Specialist.

3. The Board should maintain complete and accurate logs of all complaints received and their resolutions.

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. Logs of complaints received and their resolutions are available.

4. The Board should ensure that all complaint files contain documentation of the complaint, the resolution, and other pertinent information.

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. Complaint files now contain the information suggested.

5. The Board should ensure that licensure files contain records of any complaints and their resolutions.

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. The information is now placed in both the licensee file and the complaint file.

6. The Board should separate its investigative and adjudication functions by:
  - (a) Using a contract investigator, board member, or staff person to perform investigations, identify potential statutory violations, and make recommendations to the Board; or
  - (b) Assigning a board member or staff person to work with an investigator to perform investigations, identify potential statutory violations, and make recommendations to the Board.

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation has been implemented. See page 6 "Changes in investigation and adjudication functions" of Agency Response on how legal counsel assisted the Board and the investigative method currently used complies with the Arizona Agency Handbook.

7. If the Board chooses to use a board member to conduct investigations or to work with the investigator, that board member should recuse himself/herself from participating in the adjudication of the case.

**Agency Response:**

The finding of the Auditor General is agreed to and the audit recommendation has been implemented. See page 6 "Changes in investigation and adjudication functions" of Agency Response on how legal counsel assisted the Board and the investigative method currently used complies with the Arizona Agency Handbook.

**Auditor General's Finding IV Recommendations:**

1. The Legislature should consider reestablishing a modified lump-sum appropriation for the Board.

**Agency Response:**

The finding of the Auditor General is not agreed to and the recommendations will not be implemented. See page 6 "Board did not find fiscal management problems" of Agency Response.

2. To ensure management problems are corrected, the Board should require the executive director to submit a corrective action plan, including a timetable, for addressing records maintenance deficiencies in areas such as complaints, examinations, contracts and meeting minutes.

**Agency Response:**

The finding of the Auditor General is not agreed to and the Board does not find it necessary to implement the recommendations. Complaint information has been updated in the new program database. It is necessary to reenter all examination records for physicians into the new database program. Contracts are on the Board's meeting agendas for approval and are approved in accordance with State Procurement Laws. Board meeting minutes are up to date.

3. The Board should establish a procedure and regular schedule for reviewing the executive director's progress toward correcting deficiencies.

**Agency Response:**

The finding of the Auditor General is not agreed to, but the recommendations will be implemented when the Board finds that deficiencies exist.

4. The Board should establish a procedure and regular schedule for reviewing the Executive Director's performance in managing the agency. As part of such a review, the Board could consider soliciting feedback from individuals, organizations, or agencies that have regular contact with the agency.

**Agency Response:**

The finding of the Auditor General is not agreed to, but the recommendations will be implemented as part of the semi-annual review of the executive director in accordance with guidelines recommended by the Department of Human Resources and personnel rules.

5. The Board should review decisions made between August 1998 and August 1999 to ensure that at least three board members, not including the executive director, were present to conduct business. If not, the Board will need to review the decisions made during those meetings and determine whether to ratify them.

**Agency Response:**

The Board can not agree or disagree with this finding at this time. Board legal counsel is reviewing statutory provisions and Board meeting minutes from August 1998 to August 1999.

6. During its semiannual regular meetings the Board should caution members to avoid participating in decisions where there may be the appearance of a conflict of interest.

**Agency Response:**

The finding of the Auditor General is not agreed to, but the recommendations will be implemented. Semi-annual regular meetings are not appropriate since new appointees do not take office until after the mid-year annual meeting. The Board already requests its legal counsel assigned by the Office of the Attorney General to present information at open board meetings to newly appointed Board members that relate to conflict of interest, meeting decorum, ethics and other statutory provisions regarding conduct as an officer of the state. In addition, Board members are required to take and complete a course in ethics training within 6 months of their appointment.

**Sunset Factors:**

1. The objective and purpose in establishing the Board.

**Response to Sunset Factor:**

No response is necessary.

2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which it has operated.

**Response to Sunset Factor:**

The Board agrees with licensing remarks but disagrees with the remarks regarding management and complaint processing as stated within the Agency Response.

3. The extent to which the Board has operated within the public interest.

**Response to Sunset Factor:**

The Board disagrees with most of the statements in this finding.

4. The extent to which rules adopted by the Board are consistent with the legislative mandate.

**Response to Sunset Factor:**

The Board anticipates having a rule docket opened in July 2000.

5. The extent to which the Board has encouraged input from the public before adopting its rules, and the extent to which it has informed the public as to its actions and their expected impact on the public.

**Response to Sunset Factor:**

No response is necessary.

6. The extent to which the Board has been able to investigate complaints and resolve complaints that are within its jurisdiction.

**Response to Sunset Factor:**

The Board agrees with the findings except it never developed a complaint backlog. Page 6 and 7 of the Agency Response provides information regarding the Audit Report finding that "5 complaints were open for more than 1,000 days".

7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

**Response to Sunset Factor:**

No response is necessary.

8. The extent to which the Board has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.

**Response to Sunset Factor:**

No response is necessary.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the Sunset review statute.

**Response to Sunset Factor:**

The Board disagrees with Finding I, pages 9 through 13. The Board agrees with modifying Board statutes identified in Sunset Factor 9.

10. The extent to which termination of the Board would significantly harm the public health, safety, or welfare.

**Response to Sunset Factor:**

No response is necessary.

11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.

**Response to Sunset Factor:**

No response is necessary.

12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

**Response to Sunset Factor:**

The Board did not use the service of a contract investigator in 1999 for the complaints received since the Board did not find investigative services were necessary. The Board does use contract investigators when necessary. A "complaint backlog" did not occur for failure to use an investigator. The Board approves investigative contracts. For example, in FY 2000 the Board considered 3 investigators at an open public meeting and retained the services of one of the investigators for specific cases. The executive director insists that Board members approve these contracts. A new procedure will be initiated so that when Board members approve a contract a copy of the meeting minutes will be placed in the selected contractor file along with bids from the other prospective contractors to demonstrate the Board's compliance with procurement laws.

The Board does not dictate prices to contractors. Budget as well as appropriation information is available to the public. A person who reviews the Board budget and its appropriation knows the specific dollar amount of an itemized budget request.

## Other Performance Audit Reports Issued Within the Last 12 Months

99-8	Department of Water Resources	99-20	Arizona State Board of Accountancy
99-9	Department of Health Services— Arizona State Hospital	99-21	Department of Environmental Quality—Aquifer Protection Permit Program, Water Quality Assurance Revolving Fund Program, and Underground Storage Tank Program
99-10	Residential Utility Consumer Office/Residential Utility Consumer Board	99-22	Arizona Department of Transportation A+B Bidding
99-11	Department of Economic Security— Child Support Enforcement	00-1	Healthy Families Program
99-12	Department of Health Services— Division of Behavioral Health Services	00-2	Behavioral Health Services— Interagency Coordination of Services
99-13	Board of Psychologist Examiners	00-3	Arizona’s Family Literacy Program
99-14	Arizona Council for the Hearing Impaired	00-4	Family Builders Pilot Program
99-15	Arizona Board of Dental Examiners	00-5	Department of Agriculture— Licensing Functions
99-16	Department of Building and Fire Safety	00-6	Board of Medical Student Loans
99-17	Department of Health Services’ Tobacco Education and Prevention Program	00-7	Department of Public Safety— Aviation Section
99-18	Department of Health Services— Bureau of Epidemiology and Disease Control Services	00-8	Department of Agriculture— Animal Disease, Ownership and Welfare Protection Program
99-19	Department of Health Services— Sunset Factors		

## Future Performance Audit Reports

Department of Agriculture’s  
Food Safety and Quality Assurance Program

Department of Public Safety—  
Crime Lab